

596

Sessions Cases

Adjudged in the COURT of
KING's BENCH,

Chiefly touching
SETTLEMENTS,

FROM

The latter End of Queen ANNE's Reign
to the present Time:

WITH

TWO TABLES,

The one of the Names of the CASES, the
other of the PRINCIPAL MATTERS
therein contained.

In the SAVOY:

Printed by HENRY LINTOT, Law-Printer to the King's most
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THE
P R E F A C E
T O T H E
R E A D E R.

THE following Cases
were the Collection
of an eminent Bar-
rister deceased; and most
of them are entirely new,
so it is apprehended, from
the Usefulness of the Mat-
ter about which they chiefly
treat, namely the Settle-
A 2 ments

ments relating to the Poor, they will be of great Benefit; which is apparent from the general Approbation Treatises of this Sort have met with; and it is not doubted but that this Work will merit Regard; the Cases being taken more fully than former Collections of this Kind have been, and the most Eminent of the Law of the present Age concerned in the Greatest Part of them; of whom we humbly ask Pardon, if the Determinations and Arguments fall short of that Beauty and Energy
of

The PREFACE.

v

of Expression, with which they were graced when delivered; being sensible that in most Instances the Substance is only retained; but we have kept close to our Author's Manuscript without any Alteration or Addition, except in the Table of the Principal Matter added at the end of the Book, and the Contents of each Case set forth in the Margin, that the Reader at once may be apprized of the Subject Matter thereof; which was done with a View to render the Work as compleat and useful

ful as possible; and it is hoped that the Defects and Imperfections therein will meet with Excuse, as we are deprived of the Assistance of the Author to introduce them to the Publick; to whom if they shall appear useful, the Editor will have the Satisfaction of attaining the End desired by the Publication.

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Michaelmas.

Michaelmas, ninth of Queen Anne.

The Queen *against* The Inhabitants of Middleham.

I. **A**N Order was made to remove *John Davery* a Child of ten Years old, Son of *Francis Davery*, to the Parish of ————

Ages of Children must be set out in Orders of Removal.

for that it appeared that the last Settlement of *Francis* was at the said Parish. The Order was quashed; for when it appears that the Child is two or three Years old, the last Settlement of the Father is the Settlement of the Child; but when the Child is of an Age as by Possibility might have gained a Settlement, as by being bound Apprentice, there must be an Adjudication of the Child which is not here.

Where there is a special Undertaking of the Father to pay for the Infant's boarding, &c. the Infant is not chargeable.

The same Term.

St. Mary *against* St. Lawrence, Reading.

Executing the
Office of
Warden in a
Parish gains
a Settlement.

2. *A.* Living in the Parish of *St. Lawrence* is elected Warden, which is in the Nature of Tithing-Man for the Borough at the Court-Leet.

The Question was, whether by executing this Office for the Borough he gained a Settlement in the Parish of *St. Lawrence*?

Mr. Justice *Parker* seemed to think that this was not a Parochial Office within the Intent of the Act, and compared it to the Case of *St. Michael's Cornhill*, where it was held, that paying the Scavengers Rate did not gain a Settlement, because it was not a Parochial Rate, and if the Rate is not Parochial, the Office is not; as for a Constable, or Tithing-Man which is in the Nature of a Constable, they do certainly gain a Settlement; and though the Power of a Constable in *London* does extend beyond his own Parish, yet that is by Custom, for he is elected Constable of that Parish only, but here *A.* is elected Warden for the Borough.

The

The three other Judges seemed to be of a different Opinion; and Mr. Justice *Eyre* said, there was a Difference between paying to a Scavenger's Rate, and executing the Office; for a poor Person who is concealed in the Parish, may be taxed and pay to the Rate privately, without the Knowledge of any of the Parishioners, therefore unreasonable it should gain a Settlement: But when a Man executes such an Office in a Parish, it is notorious to the Parish, and though the Office may extend to other Parishes, yet 'tis an Office in that Parish.

Mr. Justice *Powell* said, the Word *Town* in the Act was impertinent, if it must be only a Parochial Office can give a Settlement; the Words are *if he shall execute any Office in a Parish or Town.*

Mr. Justice *Parker* said, that the Act did not always intend Notoriety, for a Person might be privately assessed by the Overseers of the Poor, yet this being a Parish Duty did gain a Settlement; if a Person was hired and lived a Year in a Service, this gains a Settlement, and yet this may be very private; but when upon a reasonable Judgment the Party was likely to get his living, and not to become chargeable to the Parish, he had then gained a Settlement: As to the Word *Town*, that could never be intended of

such a Town as *Reading*, where there are several Parishes; for at that Rate he might, by executing the same Office, gain a Settlement in every Parish in *Reading* by removing from one Parish to another; that must be intended where there are two or more Towns in one Parish, and each Town provides for its own Poor, and elects its own Officers; then Executing an Office in such Town does gain a Settlement in such Town.

The same Term.

Parish of *Beaton* against *Southgatebury*.

Sessions being Judges, it is not necessary for them to set out the Reasons of their Judgment; *but if they are moved so to do, and they refuse, King's Bench will compel them.*

3. **A**N Order made by two Justices, upon an Appeal to the Quarter-Sessions, is generally set aside without shewing any Cause: Mr. *Carle* moved to quash the Order of Sessions for not specifying the Reasons, because though the Order of Justices might be set aside only for want of Form, yet this general Order was a Bar to them from making another; he said it had been so adjudged.

Salk. 607.

The Court agreed it was not necessary for them to shew any Cause, for they were Judges; *if the Order was set aside for*

Court of King's Bench.

for want of Form, you should have moved them to specify that as a Reason, and if they had refused it, we would have compelled them to it; but no Reason appearing we must conclude it was set aside on the Merits of the Cause. Afterwards Mr. Carle brought two Precedents in Point, which the Court did not approve of, but held the Order of Sessions need not give any Reason, and was therefore to be confirmed; yet it appearing that the Original Order was insufficient, they inserted in their Rule, that the Order of Sessions should be confirmed, because the Original Order was insufficient; so that by this Rule they might make a new original Order.

Mr. Justice *Eyre* against such Order; for he said if the Merits of the Cause were determined at the Sessions, 'tis unreasonable it should be disputed.

Mr. Justice *Powel*: A Determination of the Merits upon an insufficient Order is no Determination.

The same Term.

Anonymus.

No Removal
without Com-
plaint, for that
is what gives
the Juris-
diction.

4. **A**N Order of Sessions recites, that upon due Notice, and after hearing the Allegations, Differences and Proofs, of the Parish Officers of both Parishes, they remove *A*. This Order was quashed; for here does not appear to have been any Complaint, and the Justices have no Jurisdiction without a Complaint; for they cannot make an Order to remove a Man *ex officio*.

The same Term.

Rugwick against Dunsfold.

Hiring for
Half a Year,
then for a
Year, and
Service for
Half that Year
gains a Settle-
ment;

but Hiring
and Service
for two Half
Years, and
one Quarter
gains none.

5. **H**ill. 10 *W. Stephenton* against *Overton*, it was held that where a Man was hired for Half a Year which he served, then hired for a Year of which he served Half, it gained a Settlement, for here was, according to the Words of the Statute, Hiring for a Year and Serving for a Year by two Halves. The present Case is, *A*. was hired for a Quarter which he serves, then hired for Half a Year which he serves,

serves, then hired for another Half Year which he serves, this the Court held not within the Statute; for if you unite the Service, the Hiring is not for a Year, as 'tis in the other Case; but they much doubted of the other Case, and seemed to be of Opinion, that the Service as well as the Hiring should be intire. *Salk. 535.*

The same Term.

Bishops Waltham *against* Farram.

6. JUSTICES make an Order to remove *A. is sent to B.*
one Sweetapple to B. Inhabitants of B. appeals, and
B. Appeal to the Quarter-Sessions, there Order is dis-
the Order is set aside; then by Order of charged, then
two other Justices he is sent again to *B. again, which*
which is confirmed at Sessions, but quash- is confirmed
ed here; for after the Order for sending him at Sessions, but
to *B. was quashed, they cannot send him quashed in*
there by a new Order. *King's Bench.*

The same Term.

Anonymus.

7. AN Order of Sessions quashed, be- *Adjudication*
cause the Justices therein adjudge *of Settlement*
the Party to be last settled at *Woosam,*
and order him to be carried to *Walsam,* and Order
sends him to
Walsam,
The quashed.

The same Term.

Anonymus.

Certificated
Persons must
be adjudged to
be actually
chargeable be-
fore remove-
able.

8. **A**N Order of Sessions quashed, be-
cause it set forth, that by a Cer-
tificate under the Hands of the Church-
wardens, &c. *Douglas* was likely to be-
come chargeable to the Parish of *B.* where-
as by the Act 8 & 9 *W.* no Person set-
tled according to that Act can be remo-
ved till he does actually become charge-
able.

The same Term.

Parish of Hunniton and St. Mary
Arches.

A Certificate
is conclusive
to the Parish
giving it.

9. **A.** Procures a Certificate from the
Parish of *B.* according to the
Statute 8 & 9 *W.* by Virtue of which
he is admitted into the Parish of *D.* but
proving chargeable he is sent back again
to *B.* they, under Pretence he had never
gained a legal Settlement with them, by
Order of Justices, send him to *C.* where
they pretend he was last legally settled.

Sir

Sir *Peter King* moved to quash this Order, because such Certificate given by *B.* is not a legal Settlement within 9 & 10 *W.* which says that nothing shall be deemed a legal Settlement but Renting a Tenement at 10 *l. per Ann.* or Executing some Parish Office, yet such Certificate is an Estoppel to the Parish of *B.* from saying he was not legally settled with them, and refusing to admit him again. *Salk.* 530, 535.

Trinity, ninth of Queen Anne.

The Queen and Brambley.

10. **T**O quash an Order of Sessions (made upon Complaint of the Churchwardens) to commit *B.* to Prison till he finds Sureties to keep the Peace with his Wife, and provide for her. On Churchwardens Complaint, Sessions order to be committed till Security given to keep the Peace with Wife, and maintain her.

By the Court: If he beats his Wife she has her Remedy; the Churchwardens cannot take notice of it; if he do not provide for her, and she becomes chargeable to the Parish, the Justices may make an Order for him to pay such a Sum of Money to indemnify the Parish, but cannot imprison him. Churchwardens have nothing to do therein, but if chargeable, Justices may Order so much Money to be paid, but cannot imprison.

The

The same Term.

Roſtem against Flixton.

Orders of Removal must particularise Children, and set out their Ages.

II. **A**N Order of Sessions was made to remove a Woman and her five Children from the Parish of *Flixton* to the Parish of *Roſtern*. Moved to quash the Order, for *non conſtat* which of the Woman's Children, what their Names were, whether under seven Years old, or else they cannot be removed with their Mother.

Court: An Order of Sessions is in Nature of a Judgment, and must be certain; this Woman, for ought appears, may have twenty Children.

Where there is *ſimilis ſonus* it is no Variance.

Then Sir *Edward Northey* moved to quash the *Certiorari* for Variance from the Order, *Roſſtern* and *Roſtem*, and *Tlixton* and *Flixton*; but being *ſimilis ſonus* was not allowed.

The

The same Term.

Queen and Chapman.

12. **T**WO Justices make an Order that *Chapman* shall pay the Overseers of the Poor 5*l.* for putting out a Bastard Child Apprentice; the Child puts himself out, the Justices at the Sessions make an Order that the Overseers shall pay 4*l.* of the 5*l.* to his Master, and the remaining 20*s.* to a Stranger, for the Use of the Lad.

Putative Father of a Bastard; Justices Order to pay 5*l.* to Overseers to put him out Apprentice; Sessions Order 4*l.* of the 5*l.* to Master, and 20*s.* to a Stranger for the Lad, bad.

By the Court: The Sessions have no Power to make such an Order; the Matter referred to the Judges of Assize.

The same Term.

Queen against St. Michael's Cornhill.

13. **T**HE Question was, whether paying Scavengers Rate in the City of *London*, was a Parish Duty and gained a legal Settlement within the Act.

Scavenger's Rate, paying thereto gains no Settlement.

By the Court: It is not, for the Scavengers are elected at the Wardmote; the Rate is assessed by the Common Council

'Sessions Cases adjudged in the

of the City; the Aldermen and Common Council of the Ward appoint Commissioners, who send order to any Scavenger in a Precinct to collect for that Precinct, which may contain several Parishes and Pieces of a Parish, so that it cannot be a Parish Duty, no more than the Queen's Tax, both which are Parish Duties in the Country.

The same Term.

Queen against Inhabitants of St. John.

Order of Removal of a Child one Year old, not said likely to be chargeable to the Parish, removed to P. as the Place of her last legal Settlement, being born there, not sufficient.

14. **M**R. *Raymond* moved to quash an Order of Justices to remove a Child of a Year old. The first Exception was, that she is likely to become chargeable, not saying to the Parish; secondly to remove her to *St. John* in *Peterborough*, which was the Place of her last legal Settlement, she being born there, which he said is not sufficient to gain a Settlement.

Michaelmas,

Michaelmas, tenth of Queen Anne.

Parish of Spittlefield against Bromley.

15. **J.** *L.* was sent by Order of Justices to *A. sent to B.*
Spittlefield as the Place of his last *B. send him*
 legal Settlement; they without appealing *to C. without*
 to Sessions send him to *Bromley* by Order *appealing,*
 of two Justices likewise; and it was moved *naught.*
 to quash this last Order, because they can-
 not send him from them by Order of
 two Justices, but must appeal to the Quar-
 ter-Sessions, as was adjudged in the Case
 of *St. Andrews, Holbourn.* Quashed unless
 Cause.

The same Term.

Forty against Beaufere.

16. **F**OR a Prohibition the Church-
 wardens set forth in their Libel, *Churchwar-*
 that whereas there was a standing Rate in *dens cannot*
 the Parish, which was 10 *d.* per House, *make a stan-*
 for Parish Expences, they did by Con- *ding Rate to*
 sent of the Majority of the Parish make *bind their*
 an Order, that thirteen such Rates should *Successors.*
 be collected for Parish Expences, six of
 which should go towards Building a Gal-
 lery

lery in the Church. Mr. *Salkeld* and Sir *Peter King* argued, that it has been often adjudged in this Court, that there cannot be a standing Rate in a Parish; secondly, that the Majority of a Parish cannot bind the rest to build a Gallery; for they can only bind them for such Things as they are subject to by Common Law, and presentable to the Bishop for not doing.

Court: Churchwardens cannot make a standing Rate *pro omnibus temporibus*, or to bind their Successors, because Circumstances may alter; and though it was, when made, an equal Rate, it may become unequal; but this is a new Rate or Assessment after the Model of the old Rate, and is the very same as if they had said thirteen Times 10 *d.* for they only refer to the old Rate for the Sum. Secondly, before the Reformation few Churches had any Pews in them, yet they have been since thought necessary, and the Parish is chargeable with them; so that if there are not Pews sufficient in the Body of the Church, they are chargeable with Galleries; they are not presentable for it, but for not repairing Bells they are.

The same Term.

Plimpton St. Maurice against Plimpton Morris.

17. **T**HE Overseers of the Poor for the first Parish complain, that *A.* had intruded in their Parish, with the usual Suggestion, and desire he may be removed; the Justices refuse to make any Order.

Court will not grant a *Mandamus* to Justices to make an Order of Removal.

Sir Edward Northey moved for a *Mandamus* to oblige them to make such Order (*si ita fit*), or if he has gained a Settlement in the Parish, and they cannot remove him, to return it to the *Mandamus*. Mr. Justice Powell said, that if Justices would not execute their Duty, they could oblige them to it, and was inclined to grant a *Mandamus*; but Lord Chief Justice and Mr. Justice Eyre said, that if the Justices made a false Return, though by Mistake, they were liable to an Action, which subjected them to an unreasonable Vexation; besides if they do not see fit to make an Order of Removal, they cannot make any other Order.

Mr. Justice Powell, upon reading the Statute, which says, (Justices upon such Complaint

Sessions Cases adjudged in the

Complaint may remove such Persons) was of the same Opinion as to the Suggestion, that the Justices were Inhabitants of the last Parish, and therefore refused to make such Order; the Court will not presume that the Justices would act contrary to their Duty; besides there are Justices enough in the County who are of neither Parish.

Easter, tenth of Queen Anne.

Queen against Parish of St. Giles.

Birth only gives Settlement to a Child legitimate, when the Father's Settlement is not known.

18. **J**USTICES make an Order to send an Infant from the Parish of *R.* to the Parish of *St. Giles*; because it appears that tho' the Father was last settled at *R.* yet the Child was born at *St. Giles's*; this Order was confirmed at Sessions, but now quashed; for the place of the Settlement of the Child is with the Father, and not the Place where the Child was born; but if it cannot appear where the Father was settled, the Place of its birth shall be the Place of Settlement.

The

The same Term.

Anonymus.

19. **O**RDER at Sessions upon Complaint of *A.* that her Husband had made over all his Estate to his Son, and was run away. The Justices at Quarter-Sessions order two Justices of that Division to examine into the Matter, who certify that it is true; upon which Certificate they make an Order, that for as much as the Husband has made over his Estate in Trust to his eldest Son who was dead, and this second Son was his Executor, they order him to allow 8 *d.* per Week to *A.*

A. makes over his Estate to his eldest Son, who dying makes his Brother Executor. The Father being run away, the Sessions Order the Executor to pay *A.*'s Wife 8 *d.* per Week.

Mr. Justice *Powel* said this was more like a Decree in Chancery than an Order. Quashed.

The same Term.

Parish of Denton against Stoke-Lane.

20. *A.* Is born in *D.* then is a Covenant Servant in *B.* which is a Place Extraparochial, then came into *T.* The Justices at Sessions make an Order, that if

Order of Sessions must be positive, cannot be conditional.

Sessions Cases adjudged in the

the Court of *Kings Bench* think him last settled in *D.* we send him to *D.*

By the Court : This Order must be quashed; for though it was only for their Opinion, yet the Justices should have made a positive Order, and the Court by Quashing or Affirming that Order, would give their Opinion.

Lord Chief Justice seemed to think, that if a Man could gain a Settlement in an extraparochial Place, yet they could not send him there by this Act, because this Act cannot be executed in such a Place; for the Act says, the Party shall be delivered to the Overseers of the Poor, and they to take care of him; but here can be no Overseers of the Poor, for an extraparochial Place can have no Officers, neither can they send him to *D.* because that is not the Place of his last legal Settlement, having gained a Settlement since in *B.*

Mr. Justice *Powell* said, this would put it in the Power of every Person living in a Place Extraparochial to intrude into what Parish he pleases. Adjourned.

The same Term.

Queen against Rutter.

21. **A**N Order of Sessions upon 5 *Eliz.* *A.* puts him-
c. 4. for removing an Apprentice; self Appren-
the Order was, that upon the Petition of tice to *B.* who
Paine, it did appear that he had put him- not teaching
self an Apprentice to *R.* who not having him his Busi-
Business enough to instruct him in his Art ness, but beat-
according to his Agreement, and *P.* com- ing him, *B.*
plaining of it, he did beat him with a Pe- is bound to
riwig Block, upon which he complained Sessions; and
to a Justice, who bound him over to appear not appearing,
at the next Sessions, where not appearing, Court sent him
the Court sent him a Summons; but not a Summons,
appearing upon that, they made an Order but not appear-
for removing his Apprentice, and that he ing thereon,
should pay him back 5 *l.* Court dis-
charge Ap-
prentice, and
order *B.* to
repay 5 *l.*

Sir *James Mountague* argued, that the Master is not bound over upon Complaint of the Apprentice, that he was not able to teach him his Trade, but for beating him; that by the Act the Justices cannot make such an Order, unless the Master is present; that whereas it was objected that he had not sufficient Business to teach him the Art of making Periwigs, that was an Art unknown at the Time of the Making the Act.

Sessions Cases adjudged in the

Mr. *Darnel* argued, that this Recognisance shall be taken for one Matter, as well as for the other; or at least when he is bound to appear once, he need not be bound to appear again at the same Sessions.

Parker and *Eyre* Judges held, that this Statute had been stretched too far already; for they could not see that the Justices had any Authority to remove Apprentices who were bound voluntarily, but those only whom the Justices had obliged to bind themselves within this Act; neither did the Act give them any Power to order the Master to repay any of the Money, which is an Argument the Act intended only to give them Power over such Apprentices as gave no Money; for it is very reasonable, that when an Apprentice is removed for being misused by his Master, the Master should pay back Part of the Money; but their Authority being settled by several adjudged Cases, they would not shake them, neither would they extend the Act in any other Case further than the Words of it, for that was to make Laws, and not to expound them; therefore they thought it absolutely necessary that the Party should appear at the Sessions; as for the Practice of the Sessions being otherwise, that is a wrong Practice; for the Sessions have not an original Jurisdiction

to proceed upon the Petition of an Apprentice, but a special Authority, which they must pursue strictly, and the Master and the Apprentice must come before a Justice, who, if he cannot make up the Matter, must bind them over; but if the Master do not appear, though he is beyond Sea or in Prison, the Apprentice cannot be discharged, but the Recognisance of the Master must be estreated. In making Order for removing a poor Person it is not necessary that he be present, because not in the Act, but a Complaint is necessary for that is directed. *Powell* and *Powis* Judges agreed, that the Presence of the Person was necessary.

Orders of Removal must be on Complaint; and whether the Pauper should not be Present, 2

Bishops Waltham against Farram.

22. **M**R. Solicitor General shewed Cause why the Order should not be quashed, because it did not appear that the first Order was quashed upon the Merits of the Cause, or for want of Form, and then they might make a new Order; if it was upon the Merits, the Justices should have said so in their Order. The Court held that the Justices at Sessions have no Power but to quash or affirm without giving any Reason; that it shall be supposed to have been

Sessions can only affirm or quash, and need not give any reason; and it shall be presumed to be upon the Merits, unless the contrary appears.

upon the Merits of the Cause, unless the contrary appear; but this second Order being made six Months after the first was quashed, the Person may have gained a Settlement in *F.* since that Order was quashed.

N. B. Videtur nobis, or do believe to be true, was held a good Adjudication.

The same Term.

St. Giles Cripplegate against St. Mary Newington.

Scavenger's Rate by the Statute is made a Parochial Duty, and Paying to it gains a Settlement; altered by 9 Geo. 1. whereby paying thereto, or to Highways, expressly said shall gain none.

23. **T**HE Question was, whether Paying to the Scavenger's Rate in the Parish of *N.* which was divided into four Hamlets, each of which made and collected a Scavenger's Rate for themselves; they all agreed the Scavenger's Rate was made a Parochial Duty by the Act of Parliament, which directs that it shall be assessed in the Presence of the Churchwardens by the Inhabitants of the Parish, and that Paying to this Rate shall gain a Settlement.

The Judges *Parker, Powell* and *Powis* agreed, that though this Rate was not assessed according to the Directions of the Act, yet it was by the Consent of the whole Parish, and continues still to be a Parish Duty

Duty; and though if it was refused by any inhabitant, it would be difficult to levy it; yet when they had paid it shall gain a Settlement, or else it will be in the Power of every Parish to avoid this, which is made a Settlement by Act of Parliament, only by making a Rate contrary to the Direction of the Act.

Mr. Justice *Eyre* said, he thought that when an Act has given particular Directions how a Rate shall be assessed, as in the Presence of the Churchwardens and Constables by the Parishioners, they ought to be kept strictly to it, and not suffered to make a Rate according to their own Humour, and that such a Rate did neither bind the Inhabitants nor gain a Settlement. Adjourned.

The same Term.

Anonymus.

24. **O**RDER to send *A.* and his three Children to *Homsworth*, because it doth appear that he was hired as a Servant in *H.* and served there for a Year. It was objected that it does not appear that he was hired for one Year, which the Act requires; but that he served for one Year, and therefore the Reason upon which the

Justices not bound to give any Reason for their Order.

Sessions Cases adjudged in the

Act is founded is not good. The Court said that Justices are not obliged to give any Reason for their Order, yet if they do give a Reason which appears to be ill, they will quash it, but where it does not appear to be ill, they will not intend it.

N. B. Cannot appoint a Woman to be a Parish Officer, except where there is a Custom for every Householder to execute such an Office by Turns, then a Woman may be appointed to execute by Deputy.

Lothbury against St. Peters.

An Appeal may be as well by the Inhabitants so described, as by the Church-wardens.

25. **A**N Order is made to remove a Person from *Lothbury* to *St. Peters*; they appeal; the original Order quashed: Moved to quash the Order of Sessions, because it recites, that upon the Appeal of the Inhabitants of *St. Peters*, whereas the Appeal should have been by the Church-wardens; but the Court held it might be either way.

The

The same Term.

Parish of Henningale.

26. **P**ERSON is removed from *A.* to the Parish of *Henningale*; at the Sessions the Justices quash the original Order, and order him to be sent back to *A.* as a settled Inhabitant there, but that this Order shall be final only as to *Henningale*. Moved to quash this Order, because Justices can only affirm or quash, and not make an Order to send him any where, as a settled inhabitant; but the Court held, since this Order was to be final only as to *H.* it was no more than if they had only reversed the first Order; for then he must have gone back to *A.* as an Inhabitant, but they might have sent him to any other Place, and so they may still.

Pauper is removed from *A.* to *H.* Sessions quash that, and send him to *A.* again, but this to be final only as to *H.* and good, because being final to *A.* 'tis no more than if Order had been quashed or discharged, and he must have gone then of Course, and they might send him any where else.

Trinity, tenth of Queen Anne.

Lothbury against Inhabitants of St. Peters Hereford.

27. **O**RDER of Removal is made by two Justices, which upon Appeal is quashed at Sessions; then another Order

A Complaint of the Order of Justices is an Appeal.

Order to remove the same Person to the same Place, which is quashed at Sessions, because, when the first Order is quashed, they cannot make a new Order to remove the same Person to the same Place, but the Order of Sessions is final as to that Place; upon Motion to quash the second Order of Sessions, it was objected here was no Appeal; but only on Complaint. The Court held, that a Complaint of the Order of Justices to the Quarter-Sessions was an Appeal, and that where the first original Order is quashed upon the Merits of the Cause, it is final between those two Parties, unless the Person does afterwards gain a Settlement in that Parish, which must be made to appear by the Parish from whence he is removed; but if the original Order does appear to be deficient in Form, the Court will presume that it was quashed for want of Form, (for the Justices do not give any Reason for it); it shall not be final.

Chief Justice made an Objection to the first original Order, that it was only on Complaint of the Overseers of the Poor, and does not say for what; so that it may be for any other Matter, and the Overseers need not complain that he is likely to become chargeable, yet they must complain that he intruded into the Parish according to

to the Statute. This prevailed with the other Party to refer it to a Judge of Assize, which cannot be done but by Consent.

The same Term.

Inhabitants of Petworth *against* Inhabitants of Aingmere.

28. **T**HIS was held a good Adjudication, that upon Complaint of Churchwardens and Overseers that *A.* was intruded, and could not give Security, there was great Likelihood and Probability that he would become chargeable; all which they did adjudge to be true. Secondly, that where an Order is made to remove him from *A.* to *B.* and that Order confirmed, this does bind *B.* from sending him to any other Parish upon Account of any precedent Settlement; and if he gain subsequent Settlement, it must appear upon the new Order of Removal; the Justices should not refuse to find any Matter specially that is desired.

Complaint by *C. W.* and *O.* that *A.* intruded and could not give Security, and great Likelihood and Probability he would become chargeable; all which adjudged to be true; good.

The

The same Term.

Queen against The Inhabitants of Standem.

T.W. adjudged last legally settled at *A.* as living two Years there as a yearly Servant; good. Because, where the Reason in Order not plainly bad, but only Circumstances omitted to make completely good. Court intends them in Support of Orders; as where Children are removed under their Father's Settlement, if their Settlement is adjudged to be there, Ages need not be set out.

29. **A**N Order of Removal; the Justices give a Reason, that *T.W.* living as a yearly Servant for two Years, was last legally settled at *A.* It was objected, that though the Justices need not give any Reason for their Adjudication, yet if they did give a Reason which was insufficient, the Order shall be quashed, and this Reason is insufficient; because it does not appear, that he was hired for a Year together, or that he served in one Place for a Year together: But the Court held, that where the Reason is plainly no Reason, the Order cannot be good; but where some Circumstances only are omitted, the Court will intend them in Support of the Order; as for Children where they make the Father's Settlement to be their Settlement, it is necessary to set forth their Age, that it may appear whether they were capable of gaining a Settlement themselves; but where they adjudge them settled, they need not set forth their Age.

The

The same Term.

Inhabitants of Lengham against Inhabitants of Peckham.

30. **U**PON Complaint that *A.* is likely to become chargeable, the Justices make an Order to remove him, his Wife and Family. Quashed as to Family.

Removal of *A.* and the Family; bad as to Family for want of Names and Ages.

Michaelmas, tenth of Queen Anne.

Queen against Jefferies.

31. **J**ONES the Father of a Bastard Child is taken by the Constable and suffered by him to escape, upon which the Justices at Sessions make an Order that the Constable shall pay 3*l.* and 1*s.* per Week till the Father is produced, and likewise that the Mother shall pay 6*d.* per Week; Order quashed as to the Constable, but held good as to the Mother.

Father of a Bastard permitted by Constable to escape; Sessions order Constable to pay 3*l.* and 1*s.* per Week till retaken, and the Mother 6*d.* per Week; good as to Mother, quashed as to Constable.

The

The same Term.

Queen *against* Parsons and Townsend.

Churchwardens are summoned before two Justices to pass their Accounts; after lying there two months they get them allowed by two other Justices; on which Appeal, and Sessions set aside the Allowance, and direct to go back to two first Justices; Sessions Order removed to be quashed.

32. **T**HE Churchwardens of *White-chappel* are summoned before two Justices to pass their Accounts; their Accounts lie before them for near two Months, then the Churchwardens get their Accounts passed and allowed by two other Justices; upon this the Parishioners appeal to the Sessions; the Sessions set aside that Allowance of the Account, and direct the Churchwardens to go back again to the first Justices; this Order of Sessions is removed by *Certiorari*, and moved to be quashed; because the Suggestion upon which they found this Order is, that one of the Justices who allowed the Account, did not live in the County. Secondly, because no Appeal lies to the Sessions upon Churchwardens Accounts. Thirdly, because if an Appeal does lie to the Sessions, then the Sessions must determine the Matter, but cannot make an Order upon them to go before two particular Justices.

Court: By the Statute of 43 of *Eliz.* Churchwardens had four Days to pass their Accounts, and if they passed them within

those four Days, they may get them allowed by any two Justices; that if they do not pass them within four Days, they may, upon Application from the Parish, be summoned before any two Justices of the Neighbourhood; and it is not necessary that each of them live in the same County, for he may be in the same Parish, and yet not in the same County; that when once the Account is before two Justices, the Churchwardens cannot lay their Account before two other Justices, because the Justices before whom the Account is, may commit the Churchwardens if they refuse to give an Account; that an Appeal does lie from the Justices who allow the Account to the Sessions; that though in the ordinary Case, the Sessions may settle the Account upon an Appeal, yet in this Case the Appeal is for the irregular Allowance by the two second Justices, and when the Sessions set aside that Allowance, they go back of Course to the two first Justices; but this Order is not good, because the Statute requires that it shall be made upon Hearing both Parties; but it appears that this was not made upon Hearing both Parties, but only in the Presence of Mr. *Smith*, one of the Justices. Order quashed.

The

The same Term.

Queen against Inhabitants of Icleford.

Bastard settled where born; but if born in *A.* pending an Order of Removal for the Mother, it is no Settlement in *A.*

33. **A** Woman who is an Inhabitant of *Icleford*, being with Child of a Bastard Child, goes to *Great Milton* to get some Necessaries of her Relations; the Officers of *Great Milton* procure an Order from two Justices to send her to *Icleford*; but the Waters being out before they could send her to *Icleford*, she is brought to bed at *Great Milton*. It was held by the Court, That though generally a Bastard is settled where it is born, yet in such a Case as this, where there is an Order to remove the Mother before she is delivered, the Child shall be an Inhabitant of *Icleford*. If a Woman with Child of a Bastard is sent by Order from *A.* to *B.* she is brought to bed at *B.* then the Order is quashed; the Child shall be sent back to *A.* with its Mother.

The same Term.

Queen against Inhabitants of Newick.

Order reciting no Complaint is ill, because Justices cannot remove *ex officio*.

34. **U**PON Complaint that *A.* is likely to become chargeable, the Justices make an Order to remove him, his Wife,

Wife, and *A. B.* and *C.* his Children; the Order quashed as to *A. B.* and *C.* because no Complaint that they are likely to come chargeable. *N. B.* The Appeal from Order of Justices to Quarter-Sessions must be the next Sessions after Order is made.

Michaelmas, twelfth of *Queen Anne*.

Parish of Butch Malter *against* Upton
St. Leonard.

35. *A.* Is settled in *B.* he goes into *D.* an Extraparochial Place, and there gains a Settlement; then he goes into *U.* and is sent unto *B.* by Order of Justices, which is confirmed at the Sessions: The Reason for the Confirmation was, because he could not gain a Settlement in *D.* being an Extraparochial Place, but was last legally settled in *B.* by living there as an Inhabitant. It was held that living as an Inhabitant shall be intended a perfect Inhabitant by Settlement.

Settlement
may be gain-
ed in an Extra-
parochial
Place.

But the chief Question was about the Settlement in the Extraparochial Place.

Chief Justice seemed to think, that though a Person cannot be removed to or from such a Place for want of proper Offi-

cers to execute the Order of the Justices, yet *A.* might gain a Settlement there, and when he had so done he could not be sent to *B.* for the Justices are to send him to the Town or Parish where he was settled; and in this Case he was not last settled at *B.* but at *D.* which though not included in the Word *Parish*, may be included in the Word *Town*. As to the Objection at the Bar, that if he had been settled in *France* or *Holland*, he could not be said to have been last settled in *B.* there is nothing in this, because a Settlement out of *England* is not such a Settlement as the Justices can take notice of; it is certain that by the Statute of King *Charles*, that a Person should be sent to the Place where he had last lived for forty Days, if *A.* had lived forty Days in an Extraparochial Place, he could not afterwards be sent to the Parish where he lived forty Days before; but to avoid this Inconvenience, he said he did not see why the Justices might not make Officers in those Places within the Meaning of the Words *Town* or *Place*, and then a Person who had gained a Settlement there might be sent thither. Mr. Justice *Eyre* seemed to think that a Man could not gain a Settlement in an Extraparochial Place, nor a legal Settlement within that Act; nor could the Justices make Officers there, for the Meaning

ing of the Word *Town* in the Act is only where a Parish is so large as to contain several Towns; there each Town may have its own Poor and its own Officers, so that a Person settled in one Town, cannot go to another, though in the same Parish. Adjourned.

The same Term.

Queen against Bradley.

36. **T**HE Quarter-Sessions by Order appoint, that Overseers of the Highways shall be fined 30 *l.* for not passing their Accounts. Moved to set aside their Order, because the Power given by 4 & 5 *W. & M.* to fine Overseers of the Highways was given to the Special Sessions, and not to the General Sessions. Order quashed.

General Sessions cannot fine Overseers of Highways for not passing their Accounts, though Special Sessions may.

The same Term.

Queen against Wotton.

37. **T**HE Justices make an Order that *Wotton* shall pay 10 *l.* Wages to *B.* this Order is removed by *Certiorari*, and moved to quash, because by the Servant's Petition, it appears that he was not a Husbandman, but a Coachman.

Motion to quash Order for Wages, said in the Petition to be of a Coachman; but Court will not regard Petition, only By Order.

Sessions Cases adjudged in the

By the Court: Unless it appears so in the Order, we will not take Notice of the Petition; the Order taking no Notice of the Nature of the Servant, it was confirmed.

The same Term.

Parish of Sedgebury *against* Parish of Humbleton.

Order of Sessions need not set forth the Reason.

38. **T**WO 'Justices make an Order to remove a Man and his Children to *Humbleton* from *Sedgebury*: *Humbleton* appeal to the Quarter-Sessions; they reverse the Order, because though the Person was an Inhabitant of *Humbleton*, yet he afterwards went into *Sedgebury*, and living in a Cottage there, rented Land in the Parish of *Hinton* to the Value of 12*l.* *per Ann.* The Court held, that the Sessions need not give a Reason for Quashing or Affirming an Order of Justices; but if they do give a Reason which appears to be no Reason, their Order shall be quashed; and it is no Reason, because a Man lived in a Cottage in one Parish, though he rented Land in another Parish.

And it was objected against the original Order, that the Overseers of the Poor do not complain that the Person is likely to be-

become chargeable, but it is only said that upon Complaint by them.

But by the Court: The Act only requires that Complaint must be made by them, but does not say what the Complaint must be.

The same Term.

Parish of St. John Baptist in Peterborough against Spalden.

39. **A**N Order is directed to the Church-wardens and Overseers of the Poor of the Parish of *St. John Baptist* and *Spalden*, or either of them, to take and carry such a Person to the Parish of *Spalden*, and there provide for him. It was objected that this was uncertain, and the Officers of *St. John Baptist* could not provide for him in *Spalden*. Second Objection, that it is said upon Complaint by you, which is uncertain, for the Officers of the Parish where the Person intrudes must complain; but these Exceptions were disallowed; for in Orders which shall be construed favourably it shall be intended a Direction to, and a Complaint by both of them, or else by the proper Officers. Another Objection was, that they adjudge him settled in S. being born there, which is no Reason, for unless

Order of Adjudication, wherein is a Reason which may be good, will be so intended.

he is a Bastard, or unless his Parents cannot be found, he does not gain a Settlement there by Birth.

Court: Where Justices give a Reason which cannot possibly be a Reason, their Order shall be quashed; but where they adjudge a Settlement, and give a Reason, which may be a good one, as being born there, the Court will suppose that all necessary Circumstances were had.

N. B. An Order made to the Churchwardens and Overseers of the Poor of *A*, to take care and provide for such a Child, was quashed, because does not say that its Parents were unknown, or could not be found.

The same Term.

Anonymus.

Clerk of a Parish, though not appointed by Deed, gains a Settlement by Executing the Office a Year; so does a Churchwarden.

40. *A.* Is made Clerk of the Parish of *B*, by the Parson without Deed: Question was, whether one appointed Clerk of the Parish by the Parson, and executing the Office for a Year, should gain a Settlement within 3 & 4 *W. & M.* of which the Words are, *viz. shall execute any annual Office or Charge*, for it was objected that this was not an annual Office.

By

By the Court: The Office of Churchwarden was by Common Law, and yet that is for a Year without any Deed or Writing; so it is of a Parish Clerk, he is by Common Law an Officer, and is in for Life without Deed. *Salk.* 536. Parish of *Gatton* and *Milwich*.

The same Term.

Parish of Harrow against Edgar.

41. **C**UTHBERT settled at Harrow, Renting 10*l.* purchases a Copyhold Tenement of *per Ann. without Residence* twenty-five Pounds *per Annum* at Edgar, for forty Days, to which he is admitted, and there lives gains no Settlement. and has several Children: After his Death it was adjudged, that he was last legally settled at Harrow, and order his Children to be removed thither. Moved to quash this Order.

The Solicitor General argued, that though *Cuthbert* could not be removed from his own House, yet that did not gain a Settlement for him and his Children; as when a Man comes with a Certificate, he cannot be removed till he becomes actually chargeable, yet he does not by that gain a Settlement.

But the Court held, that *Cuthbert* was settled in *Edgar*, and his Children; and Lord Chief Justice said, where it is not in the Power of the Justices to remove a Person for forty Days, he gains a Settlement, except in the Case of a Certificate which is specially provided for by the Statute; for if a Man hires a Tenement of 10*l.* *per Annum*, and unless he keeps it forty Days, it is no Settlement; so of an Apprentice, &c. and when the Father cannot be removed from *Edgar*, the Infants in Point of Nurture and Education cannot be removed from him; and if they live with him, it is out of the Power of the Justices to remove for forty Days, they gain a Settlement; for a Child does not take its Settlement from its Father as an Inheritance, but from its Cohabitation with him; besides the Children cannot be sent to *Harrow*, because the Act impowers Justices to send them where they were last legally settled for forty Days; but the Children cannot be said to be settled at *Harrow* for forty Days, when they never were there in their Lives.

N. B. If Infants are settled with their Father in *A.* the Father dies; the Mother gets a Settlement in *B.* the Infants shall be removed to *B.* for Nurture, but maintained by the Parish of *A.* and sent there again when grown up.

The

Hilary, tenth of King George the First.

The King *against* Smith.

42. **A**N Indictment for Usury on the Statute of *Charles* the Second, was quashed, for that it should have been by Action. Indictment quashed, the Statute requiring an Action.

Trinity, twelfth of Queen Anne.

The Queen *against* Smith.

43. **A**N Order of Sessions is made for *Smith* to pay 40s. for the Expenses the Parish have been at in maintaining a Bastard Child, and to pay sixteen Pence *per* Week, towards Maintaining the Child till it attain the Age of eight Years, and to discharge the Parish of all Charges after, or pay five Pounds for putting it out Apprentice, and give Security for performing this Order. It was objected that this was made without Complaint of the Parish, and the Justices cannot *ex officio* take Notice that a Man has a Bastard, and make an Order upon him; for if he is able and willing to maintain it, he is not within the Statute; that the Order to pay sixteen Pence Ordered that a Man shall pay for the Maintenance of a Bastard Child till eight Years old, held good.

Sessions Cases adjudged in the

Pence *per* Week till the Child is eight Years old, is ill, because he may not be chargeable so long; that it was uncertain to pay five Pounds, or secure the Parish.

But these Exceptions were all disallowed, for the Statute does not require that it should be upon Complaint; it does appear that the Child was chargeable, though that is not necessary, for all Bastards are chargeable upon the Parish; and though it may be the Mother keeps it till she is well, yet she may then run away; so that the Justices may make an Order against the Father, unless he has given Security that it shall never become chargeable; it cannot be intended the Child should get its Living before it was eight Years old; the Alternative is for the Benefit of the Party; but the Order quashed for the last Clause, which was for finding Security to obey the Order, for that cannot be till he has broke it.

Trinity, twelfth of Queen Anne.

The Queen against Searle.

Overseers appointed for a Year, held good.

44. **N**omination of Overseers of the Poor of *Honniton*; the Justices having Authority to appoint fit Persons and

and sufficient Housholders, it is not sufficient to recite that these Persons are sufficient Housholders, as appears by the Certificate of the Churchwardens, but the Justices must determine that these are sufficient Housholders.

Secondly, as to the Limitation of the Office, the tenth of *April* is the Time of Nomination, and they appoint for the Year, which is ill; for they must be appointed at *Easter*, or within a Month after; and *Easter* being moveable they may be in above a Year, or less, and then there would be no Office.

Sir *Peter King*: These Orders are to be construed as Orders of Regulation, and not Orders of Judgment, as Settlements, &c. and it is not usual for this Court to meddle with Orders of Regulation, as for Rates, &c. The Words were, that upon Certificate of the Churchwardens of *Honniton*, that *A. B.* and all of them, Housholders of *Honniton*, are fit to be Overseers of the Poor.

The Court held, that these Words, *all of them*, &c. were the Words of the Justices, and not of the Churchwardens; and the Appointment for a Year according to the Act of Parliament, is good.

The

The same Term.

Parish of Eglium *against* Hartley
Wintly.

Order re-
moves Widow
and Children,
not good.

45. **A**N Order adjudges that *J. S.* was settled at *B.* and therefore they remove his Widow and Children to *B.* Order is quashed, for the Wife may get a Settlement after the Death of her Husband.

The same Term.

Parish of Silveston *against* Ashton.

A Servant
hired for a
Year at *A.*
and lives with
her Master
there six
Months, who
afterwards
removes to *P.*
and serves the
other six
Months; held
to be settled
at *P.*

46. **A**Servant is hired by her Master for a Year at *Ashton*, lives with him there for six Months, then he removes to *Patchel*, and gains a Settlement there, where she serves the other six Months.

Lord Ch. Just. *Parker* and Justices: Upon the 13 & 14 *Car. 2.* Servant was not removeable from his Service at all, if he was hired regularly; and so by serving forty Days he got a Settlement. By Statute of *Jac. 2.* Notice must be given, but that does not extend to Persons not removeable before that Statute. 3 & 4 *W. & M.* makes Notice necessary to be published in the Church;
and

and that Statute directs several Qualifications, in which Case Notice was not necessary, and Serving for a Year was one. Upon that Act, if a Person was hired for a Year, and served only forty Days, it gained a Settlement. But by the other Statute, the Service must be a Year; and notwithstanding that Statute, it is the Continuance of forty Days makes the Settlement, if the Circumstances required by the Act are complied with; and the Hiring is not into any particular Parish, but in any Parish that the Servant serves forty Days; if the Hiring was according to the Statute, and the Service a whole Year, as the Statute appoints, the next Question is, whether the Master holding his Land still in *Ashton*, does not make him an Inhabitant of *Ashton*? But that cannot be, for he only keeps his Land to take off his Crop, but is an Inhabitant at *Silveston*.

By *Chief Justice*: If a Servant is a single Person and has a Child, yet if such Child is provided for, and no Charge to the Servant, he may gain a Settlement within the Statute, though it says, *not having Child*.

By Mr. Justice *Powis*, sen. it was held, that if a Lodger hires a Servant for a Year, who serves a Year, he gains a Settlement though his Master was not settled. Accord with Chief Justice.

Mr. Justice *Eyre*: There are two Questions; First, Whether any Settlement is gained? Secondly, In which Parish?

The Servant has complied with the Circumstances required by the Statute. The Master was settled in *Ashton* at the Time of the Hiring, by which the Servant became Part of his Family.

It was held in the Case of an Apprentice, that where his Master was settled, there he gains a Settlement; and there is as much Reason in the Case of a Servant; it would be hard upon the Servant, if the Year's Service should not gain a Settlement; and it seems to me he gains a Settlement where his Master last settled; and the Words in the Statute, *the same Service*, are no more than a Service in Pursuance of that Contract.

Mr. Justice *Powis*: The Clause is relative to the Place, and it is for the Sake of that Place that the Act was made, and not in Regard of the Master; and the Act seems to take away the forty Days, and make a Year's Service a Settlement; and therefore the Service must be in the same Place for the whole Year, that they may be sufficiently acquainted with the Behaviour and Character of the Person who is to be settled.

Chief

Chief Justice: It was declared that the Intent of the Parliament by *such Service* was only a Service for a Year; but there was no Dispute of the Place, nor is it necessary; for it is not material where the Party lives, if he behaves himself well in his Service for a Year. Besides, according to this Exposition, those Gentlemen who live Half a Year in the Country and Half a Year in *London*, their Servants could never gain a Settlement. It is certain the Servant could not be removed from his Service while he lived in the second Town, and if he was not removeable for forty Days, he is settled; and the Doubt which occasioned the second Statute of *W. & M.* was upon the Time of the Service, not the Place.

Mr. Justice Eyre: Upon the first Statute it was held that forty Days, in Pursuance of such Hiring, did gain a Settlement though the Party did not serve for a whole Year, which occasioned the second Statute to be made, to direct that the Service should be for a whole Year, but without any Regard to the Place. Both Orders quashed.

It was mentioned from the Bench as an adjudged Case, *Edgar* against *Henden*: *A.* having a Copyhold of about 30 s. *per Ann.* comes with two or three Children, and

lives there some Years ; after his Death it was held that the Children by living there forty Days immoveable, had gained a Settlement:

The same Term.

The Queen against Parish of Woburn.

Order of Removal of Children above seven Years of Age must have an Adjudication of their Settlement.

47. **A**N Order of Removal does adjudge the Parish of *W.* to be the Place of *J. S.*'s legal Settlement, and therefore they remove *J. S.* his Wife and five Children, one of which appears to be of the Age of twelve, another of eight, and the Rest of about seven; or under. The Court were of Opinion, that after seven the Children might gain a Settlement for themselves, and therefore there ought to be an Adjudication of the Place of their Settlement.

Michaelmas, twelfth of Queen Anne.

The Queen against Wagstaff.

48. **A**N Order was made by Justices for *Wagstaff* to take a poor Child Apprentice, and sign an Indenture, by which,
inter

inter alia, he covenants to give the Child two Suits of Cloaths, &c.

This Case is not within the Act, because it says the Children of poor Persons; but this Order says, it was a poor Child, and yet it may have Parents able to maintain it. Secondly, the Age of the Child does not appear.

Men of ordinary Trades, or of Husbandry, are compellable only to take Apprentices.

Thirdly, Mr. *Wagstaff* is such a Person as the Justices cannot oblige to take a poor Child; for it does not appear that Mr. *Wagstaff* is a Housekeeper, so that it may be he was a Lodger; and though the Act says, as the Overseers should think fit, yet that must have a reasonable Construction; the Act says, they shall put them Apprentice as they think fit; that does not extend to the Terms, but only to what Sort of Children, but the Terms are left to the Law; here is a Covenant that he shall at the End of the Term give him two Suits of Cloaths; they might as well have ordered that he should have given him a hundred Pounds. It appears that Mr. *Wagstaff* is a Gentleman, an Attorney. 3 Keb. 3 Mod.

269. At Law it was a Question upon the Statute 43 Eliz. whether a Person could be compelled to take an Apprentice till 8 & 9 Anne; but still you cannot compel every Person, but only ordinary Trades, or Men of Husbandry.

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Chief Justice: There is no Occasion to describe the Child farther than the Act requires; but the Providing two Suits of Cloaths has no Relation to his being Apprentice.

Mr. Fortescue: It is proper to have Indentures; and this is a Covenant very proper, because 8 & 9 *W. cap. 30.* gives a Power to the Justices to appoint what Terms they think fit; for the Person is to receive the Child according to such Indentures as shall be signed by the Justices, so that the Indenture is to be settled by the Justices.

Chief Justice: At that Rate the Justices may make a Covenant to give him a House, and allow him twenty Pounds *per Annum*; the Indentures are in Point of Time, and other Things properly relating to an Apprenticeship; they may appoint him Necessaries during his Apprenticeship. The Order quashed.

The same Term.

The Queen against Charlton.

Churchwarden chargeable to take care of the Poor.

49. **C**HARLTON is indicted, for that being a Churchwarden of *Finchly* he was requested by several of the Inhabitants of *Finchly*, to provide Lodging for a poor Person who was settled in *Finchly*, and that he,

he, contrary to the Duty of his Office of Churchwarden, did suffer him to lie in the Street for seven Hours ill of the small Pox.

Mr. *Darnell* moved to quash this Indictment, for the Party is not chargeable as Churchwarden; it does not appear but that other Churchwardens might have provided for him, or that he could not provide for himself, because the Statute directs forty Pounds Forfeiture.

Chief Justice: He is chargeable to take Care of the Poor as Churchwarden; if any other Churchwarden provide for him, or if he did as soon as he could, it is not an Offence against the Duty of his Office. Demur to it.

The same Term.

Great Dolby against Whitechappel.

50. **T**HE Justices of *Great Dolby* make an Order in this Manner: *Whereas A. and B. were taken up at Newport Pannel, and there whipped as Vagrants, and sent to Great Dolby as the Place of their Father's Settlement; whereas the Law does require that they ought to be sent to the Place of their Birth; and it appearing upon Oath that the Place of their Birth was*

Vagrants to be sent to the Place of their Birth.

Whitechappel, they send them to *Whitechappel*. These Orders are removed.

Mr. *Darnell* objected to this last Order, that where the Place of Settlement appeared, they ought not to be sent to the Place of their Birth. Secondly, that if they should, the Justices have no Authority in this Case, for here is no Complaint by the Parish, or if it was wrong it was proper to appeal.

The Court was of Opinion that they must be sent to the Place of their Birth; and it does appear to the Justices of *Great Dolby*, that they have not been sent according to Law, and therefore they send them to the Place of their Birth.

Chief Justice: It seems doubtful whether they should not have sent them back to *Newport Pannel*; for the Justice of *Newport Pannel* who punished them at *Newport Pannel*, is the proper Justice to send them to the Place of their Birth.

Salk. 526.

Chief Justice: It was made a Question in Chief Justice *Holt's* Time, and never determined, when a Justice has sent a Vagrant to the Place of his Birth, Whether the Justice there can send him over to the Place of his last Settlement, by Virtue of the Act of Settlement, or whether the Vagrancy has not stripped him of all Settlement.

tlement. After all the Orders were quashed for other Reasons.

N. B. Held by the Court, if an Order *Salk.* 491. of Settlement is, *Whereas* upon Complaint to us, &c. that J. S. is intruded into the Parish, *and* is likely to become chargeable; this is only Part of the Complaint and no Adjudication; but if it is *who* is likely to become chargeable; these are the Words of the Justice, and an Adjudication that the Party is likely to become chargeable.

The same Term.

Parish of Horsham *against* Shipley.

51. J. S. settled in *Horsham*, is hired nine- Several Hirings, though Service for a Year, does not gain a Settlement. teeneth of *February* one thousand seven hundred and ten, to serve in *Shipley* to *May-tide* following; at that Time agreed to serve till *Lady-day* following; at that Time agreed to serve till *May-tide* next. Quashed, unless Cause, because no Hiring for a whole Year. N. B. J. S. hired for Half a Year, serves a Year; then is hired for a whole Year, and serves Half a Year. Held it gained a Settlement, for here was a Hiring and a Service for a Year.

Hillary, twelfth of Queen Anne.

The Queen against Dalloe.

The Term of
Years not fill-
ed up in an
Apprentice's
Indenture ;
Apprentice
not bound.

52. **U**PON Complaint to the Sessions by an Apprentice of a Glass-bottle-maker ; the Justices discharge the Apprentice, and give this Reason, because it appears by the Counterpart of the Indenture, that he was not bound for any certain Number of Years.

First Exception, That this is not a Trade within the Statute.

Mr. *Darnell* : The Penal Part of the Statute shall be tied up to Trades then used, but this Clause must have a more liberal Construction ; for the Act enables any Housekeeper to take Apprentice, and then gives Jurisdiction to the Justices to take such Care as they shall think fit.

Second, They have no Jurisdiction to discharge for a Matter of Law, but only for Misbehaviour of the Master.

Mr. *Darnell* : The Words of the Statute are, that they shall do as they think fit, signifying the Cause ; in this Case it does appear, that the Indenture is of no Effect, there
being

being no Term expressed, the Justices thought fit to discharge him.

Sir Peter King : In 2 Roll 822. it was doubted, whether the Power of Justices extended to any Apprentice but as are imposed by the Act of Parliament; but in *Hill. 11 Will. Green's Case*, it was held, that it did extend to all Apprentices of any Trade within the Statute, which this is not; but if it is, yet they have no Power to discharge for a Matter of Law, as this is, but only for an Abuse of the Master or Servant.

Chief Justice : If it was a *res integra*, I should have thought it was confined to such Apprentices only as were bound by the Authority of the Justices; but it has been extended further, to any Trade which at that Time had been used then within some Market-Town.

As to the second Exception, here is an Apprentice complains to the Sessions of the Default of his Master; upon producing the Counterpart of the Indenture, it appears that the Space for the Term of Years is not filled up, and so it appears that he is not bound, and therefore not necessary to inquire further into the Default of the Master.

Mr. Justice Eyre : It has been extended further than to Trades which were exercised at that Time; they seem to have no Authority

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rity to make Orders for the Payment of Gentlemens Servants, and yet they do it every Day. Adjourned.

Michaelmas, twelfth of Queen Anne.

Parish of Dunsfole against Walborough Green.

Wife of a Scotchman with her Child sent to her own Settlement, held to be good.

53. **T**WO Justices make an Order, reciting, *Whereas* it appears to us, &c. that *M. Cambel* is Wife to *A. Cambel*, a Scotchman in her Majesty's Service; and that she with a Child of seven Years old, has intruded into the Parish of *D.* and they adjudge *W.* to be the Place of her last legal Settlement, and send her thither. It was urged that this was a Divorce, and they should have sent her to the Place of her Husband's Settlement; but the Order was held good.

Hilary, twelfth of Queen Anne.

The Queen against Dunn.

Order quashed, being for a Man to maintain his Daughter in Law.

54. **A**N Order is made for *Dunn* to maintain his Son's Widow. Sir *Peter King* moved to quash it.

First,

First, because a Daughter in Law is not within the Statute. *Secondly*, the Act is, that the Father or Grandfather, Mother or Grandmother, being of sufficient Ability, shall maintain, &c. whereas it does not appear in this Order that *Dunn* was of sufficient Ability.

Chief Justice: A Man shall be intended of sufficient Ability to maintain himself and his Family, but not farther. The Order was quashed for this last Reason.

Mr. *Chapple* cited the Case of *Challenger*; if the Son was dead the Relation ceased, and it was no Cause of Challenge; to which Chief Justice agreed.

The same Term.

The Queen against The Inhabitants of Manchester.

55. **A**N Order of two Justices directing the Churchwardens of *Manchester* to allow *Elizabeth Redish* two Shillings a Week to maintain her and her four Children, and to continue till the next Sessions, and till further Order.

Order quashed, being to allow a Woman 2 s. per Week, because it does not appear she was indigent.

First Exception, It does not appear that the Woman was poor.

4

Second,

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Second, It is ill for the Uncertainty; not naming the Children.

Third, It is ill, because to continue till further Order; whereas it should only continue so long as she is indigent.

The Order quashed, because it does not appear that the Woman was indigent, or that the Children were Inhabitants of the Parish, but the Court seemed to think it not necessary to name the Children.

*The same Term.**Parish of Litley.*

Tithes rateable to the Poor in the Hands of the Owner.

56. **I**N the Parish of *Litley* in *Lincolnshire*, the Impropiator of the Tithes made a Composition with the Occupiers of the Land. *A.* and *B.* two Justices, make a Rate for the Poor, and charge so much an Acre upon the Land in the Hands of the Occupier, in respect of the Tithes, and make a Warrant to levy this with Direction; if the Parties were not satisfied with this Assessment, to appeal to the Sessions; the Sessions is before *A. B.* and *D.* only, these Orders are removed upon a *Certiorari*.

The Court was of Opinion, that the Proceedings of the Justices was wrong, but seemed to be of Opinion that the Tithes were rateable to the Poor in the Hands of the

the Owners of the Land, for they are to be considered as Occupiers of the Tithes; but this was referred to the Judge of Assize.

The same Term.

Parish of Aumden against Malefaine.

57. *H.* Makes an Order to remove seven poor Persons to *M.* *M.* makes a new Order to remove them to *H.* the Parish of *H.* appeals; this does not waive the first Order, but the first Order is good Reason for the Appeal; it is suggested that the first Order was made after the second, but only antedated.

Information will lie against a Justice for antedating an Order.

By the Court: We cannot take Notice of that Fact, but if it can be proved, an Information may be granted against the Justice.

Easter, thirteenth of Queen Anne.

The Queen against The Parish of Havant.

58. **R**ULE to quash an Order for Removal of a poor Person; the Churchwardens refuse to receive him back again, upon which an Attachment was granted against them, unless Cause.

Officers liable to Attachment for refusing a poor Person.

The

The same Term.

The Queen against Waddon.

No Appeal
lies from the
Corporation to
the Quarter-
Sessions of the
County.

59. **A**N Order is made at the Quarter-Sessions of *Plimpton* to charge *J. S.* as the Father of a Bastard Child; *J. S.* appeals to the Quarter-Sessions of the County, who set aside the first Order, and make a new one upon *Waddon*.

Sir Peter King moved to set it aside, because no Appeal lies from the Corporation to the Quarter-Sessions of the County.

Chief Justice: The Act of Parliament is express, that the Justices of Corporation in their respective Sessions, shall have the same Power as the Justices of the County, and therefore the Appeal must be to them at their Sessions. The Order must be quashed.

The same Term.

Anonymus.

If Justices
give an insuffi-
cient Reason
for their Ad-
judication, it
will vitiate
the Order.

60. **M**R. *Letchmere* moved to quash an Order, because the Justices set forth a Fact which does not amount to a Settlement, and therefore we do adjudge the Party

Court of King's Bench.

61

Party to be settled there, whereas it is not a Settlement.

Chief Justice : Where they adjudge a Settlement; and give a Reason which is insufficient with it, and shews that it can be no such Settlement, we quash the Order; but if they only give an insufficient Reason, we will not intend that to be the only Reason for their Adjudication, and therefore the Order is good.

The same Term.

Parish of Collington against The Parish of Widworthy.

61. *J. S.* is bound Apprentice in *Collington*, Apprentice settled where he served his Time. in respect of Land which he had in *Widworthy*; *J. S.* served his Time in *Collington*; the Justices held him settled in *W.* Order quashed.

Trinity, thirteenth of Queen Anne.

Parish of East Greenwich against St. Giles's.

62. *J. S.* was removed by Order of two Justices from *St. Giles's* to *Greenwich*; about six Months after two Justices make Person removed to Greenwich cannot be sent from thence by a new Order.

The same Term.

The Queen against Waddon.

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lies from the
Corporation to
the Quarter-
Sessions of the
County.

59. **A**N Order is made at the Quarter-Sessions of *Plimpton* to charge *J. S.* as the Father of a Bastard Child; *J. S.* appeals to the Quarter-Sessions of the County, who set aside the first Order, and make a new one upon *Waddon*.

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Parish of East Greenwich *against* St. Giles's.

62. *J. S.* was removed by Order of two Justices from *St. Giles's* to *Greenwich*; about six Months after two Justices Person removed to Greenwich cannot be sent from thence by a new Order. make

Sessions Cases adjudged in the

make a new Order, and remove *J. S.* from *Greenwich* to *St. Martin's*.

The Court held the second Order ill; for though it is possible that *J. S.* might have gained a new Settlement since his Removal to *Greenwich*, yet the first Order being a Judgment upon them, if he has gained a new Settlement, they ought to have mentioned it in the new Order.

The same Term.

Parish of *Woolverton* against *Sherborn St. John*.

No Exception to be taken for want of Form, when special Matter is stated for the Opinion of the Court.

63. *H.* Chargeable at *A.* being last settled at *B.* is removed to *D.* *D.* does not appeal, but would send him by new Order to *B.* who appeals; and the Justices at Sessions being doubtful, referred it to the Judges of Assize, who were of Opinion that *D.* was concluded; five Years after *D.* brings a *Certiorari* to remove the first Order, and quash it.

Sir Peter King moved that it might not be quashed, being five Years standing, and referred to the Judge of Assize.

Mr. Just. Eyre: Where at the Sessions the special Matter is found, in Order for this Court to determine the Point in Law, they cannot

cannot take Exception for want of Form in this Case; if it had appeared when the *Certiorari* was moved for, that the Order was five Years standing, it would not have been granted; or if they had applied before the *Certiorari* had been filed, we would have granted a *Procedendo*; but the Question is, whether, after it is filed, we are bound *ex debito Justitiæ* to quash it for want of Form.

Chief Justice: If the Merits of the Settlement had been referred to the Justices, we would not quash it for want of Form; but here the Merits are with *D.* and the Reference was only upon the Conclusion; let it stay, but let there be a Rule that no Return of a *Certiorari* to remove Orders shall be filed, without an Affidavit of Notice, if the Order hath been acquiesced under for a Year.

The same Term.

The Queen against Illingworth.

64. **A**N Indictment for disobeying an Order to pay Arrears of an Allowance to a poor Person, directed to be paid by a former Order.

Mr.

Justices have
not Power to
make Order
for an Allow-
ance to a poor
Person.

Mr. *Fazakerly*: First Exception, the Indictment does not set out the first Order; and if there were no first, the second Order is void, because there can be no Arrears when there was no original Order to pay the Sum: The twentieth of *April*, Order eleventh of *Queen Anne*, that the then present Churchwardens should pay, and it does not appear that these Defendants were Churchwardens, for it is only averred that on the eighth of *May* they were Churchwardens; and though they were Churchwardens, yet it does not appear that they did not pay the Money; it is only said that they refused to pay it on the eighth of *May*, or ever after, and yet they might pay it before; it is said that they had Notice of the Order on the eighth of *May*, but yet they might have Notice before.

But if this Indictment is good as to Form, yet it is ill in Substance; for the Justices have not by any Act of Parliament a Power to make such Order; and therefore the Order being void ought not to be obeyed; the Intent of the Act was to restrain the Abuse in Churchwardens and Overseers, in giving to what Persons and what Number they thought fit; and the Act directs that a Register shall be kept, but does not give the Justices a Power to direct a certain Sum to be paid.

Order

Order by two Justices to pay a Surgeon's Bill for curing a poor Woman, in *Trinity* Term in the seventh Year of *Queen Anne* was quashed, because though the Overseers were obliged to take Care of the Woman, and the Surgeon might bring his Action against them, yet the Justices have no Jurisdiction to make such Order.

But if they have a Jurisdiction to direct the Payment of a certain Sum, yet it must be to be paid out of the Parish Money when raised, and not in general; for the Overseers have no Remedy to reimburse themselves for Money laid out, as was held in *Tadney's Case*, and in the Case of the Inhabitants of *Ware*.

If it is an Order made without Jurisdiction, they are not bound to obey it. *Cro. Car.* 394.

Judgment was given for the Defendants, because the Order had been quashed before.

N. B. The Order was quashed on which the Indictment was founded.

The same Term.

Parish of Chesham *against* Missenden
Bucks.

Cottager hiring his own Daughter as a Servant, gained her a Settlement.

65. **J**OHN Barnes living in a Cottage upon the Waste, hires his own Daughter for a Year at 10s. *per Annum*; and the Question was, whether this gained her a Settlement: The Court were of Opinion that it did.

Michaelmas, first of King George the First, 1714.

The King *against* The Parish of
New-Windsor.

It is not material in what Part of the Order Justices Names are wrote.

66. **M**OTION to quash an Order of Removal of *Elizabeth Clerk*, Widow, and *George* her Son, aged nine Years, and *Elizabeth* aged seven Years.

Mr. Reeve: First Exception, the first Part is a Conviction distinct from the Order of Removal, *viz. Memorandum*, Complaint is made to us that ——— are lately come into, and are likely to become chargeable, &c. without any Justices Names; then comes

Comes the Order of Removal, which is a Recital of this Order of Conviction, as done at another Time, *viz. Whereas* we whose Names are underwritten, have this Day made an Order, &c. where *have*, being the *preterperfect Tense*, is a recital of a Thing past and done.

Mr. *Fortescue* on the other Side said, What Mr. *Reeve* calls the Order of Conviction, is the Adjudication, and the Rest is an Order of Removal, and all the Parts of the Order are relative; for the Words, *to us*, refer to the Names underwritten; and the Words, *We have this Day made an Order*, is the same as that we have this Minute made an Order.

It is not material in what Part of the Order the Names are subscribed, as appears 3 *Lev.* 86. where it is said, that it is not material in what Part of a Will the Name is subscribed.

Mr. Justice *Powis*: If the Adjudication be in any Part of the Order, it is sufficient; nay if there be no Adjudication, but it is said that it appears to us, or that it is taken by us to be so or so, this Court will think it sufficient.

Chief Justice: There is no more in this than that the first Part is the Judgment, the other the Execution; *i.e.* the one is the Determination of the Settlement, the other

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is a Direction to the Officers to remove them; the Appeal is from *the Order*, which is an Allowance that it is but one Order.

A Deed and a Bond for Performance of Covenants, is the same Deed, though the Bond recite it as a separate Deed.

Second Exception; It is said that they intruded into the Parish, and are likely to become chargeable; whereas it should have been, that they intruded contrary to Law, or that they endeavouring to get a Settlement there contrary to Law; for otherwise the Justices have not, according to 13 & 14 Car. any Jurisdiction.

Contra, The Word *intruded* must be intended contrary to Law, for otherwise they could not intrude.

Chief Justice: In 7 W. 3. this Exception was taken and over-ruled.

Mr. Justice *Eyre*: In that Case it did not appear that the Person came to settle in a Tenement under ten Pounds *per Annum*, which is a Description in the Act: But it was held upon Search of Precedents, that it was supplied, by saying that he was likely to become chargeable, for they are both Descriptions in the Act, and either is good.

Mr. Justice *Powis*: The Words *likely to become chargeable*, imply that a Person is not in a Tenement above ten Pounds *per Annum*; for if he be in such a Tenement,

no one can aver that he is likely to become chargeable.

Chief Justice: That a Person is not in a Tenement above ten Pounds *per Annum*, is not a necessary Description, but a Circumstance; and these Words are supplied by Words *likely to become chargeable*, as the Circumstances necessary to make a Man removeable, *viz.* that he came into the Parish within forty Days, is supplied by the Word *lately*. Confirmed.

The same Term.

The King *against* The Parishes of St. John and St. Mary, in the Devises.

67. **I**T being before the Quarter-Sessions to adjust and settle the Proportions these two Parishes should pay, of the Money charged on them for the Relief of the Prisoners and *Marshalsea*, and for removing Vagrants, and repairing the County Bridges; it was referred to Mr. *Long* and Mr. *Bennet*, two Justices of the Peace, to inquire, &c. and assess the Proportion, who drew up an Order, in which they do assess and adjust the Proportion, in Manner following, &c. without stating the Fact; and referring to the Court, they deliver it into

Sessions cannot delegate their Authority.

79
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the Court, who generally confirm the said Assessment without any Inquiry or Re-examination.

Exception; The Sessions cannot delegate their Authority to two Justices; therefore as they have made an Order which is void, the Confirmation must be so too; it might have been well, if they had said, that on rehearing the Matter, &c. they did confirm the said Order.

Note; Mr. Justice Eyre said that Order was quashed, because the Money was disbursed fifteen Years before.

Though in the Case of the Queen and Inhabitants of *Ware*, an Order to pay sixteen Pounds due to Overseers on Account, was quashed, because referred to Justices; though it was said that on their Report and Hearing, the Matter *de novo* did make the said Order.

Contra; It is admitted that Quarter-Sessions have Jurisdiction, though it will be a Question, whether this Act of Confirmation will not amount to an original Act, and be different to the Construction at Common Law: I do admit that if it had come back to them, it would have been naught.

Chief Justice: This is wrong, it should be on their own Knowledge and Judgment; I do not see that this is well taxed according to the Act of Parliament, for if it be taxed as a Corporation, the Assessment ought to

to be general throughout the whole; if 'as Part of the County, it should appear on the Order.

I question whether the two Justices could administer the Oath in this Matter.

It stands singly on the Order of two Justices, whereas their Inquiry should have been preparatory only to the Examination of the Sessions, for they cannot delegate their Authority.

Easter, first of King George.

Parish of Frencham *against* Pepper-Haw.

68. *A.* Hires *B.* on the third of *October*, to serve him till *Michaelmas* following, which was for one Year within a Day, (for it being leap Year, the two Days are accounted but one); he after keeps him three Days, and then paid him his Wages: Question whether such an Hiring is sufficient to gain a Settlement within the Act of Parliament.

Hiring on the third of *October* to serve to *Michaelmas* following, which was for a Year, being leap Year; Servant stays three Days after, then receives a Year's Wages.

Mr. Reeve: It was urged that this was a Fraud to evade the Act, and as it was manifestly such, that it should be an Hiring to gain a Settlement.

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1 Cro. 233. 2 Cro. 308. A Lease for one Year, saving one Day to prevent a Forfeiture, was adjudged a Fraud, and as fatal as a Lease for a whole Year.

In the Case of *Duppolt* and *R.* it was resolved that an Hiring for two Half Years should not gain a Settlement; but Justice *Powell* said, that if there be an Hiring for a Year, save a Day, it is a Shift; and I should think it a good Settlement.

The Case in *Croke* is a stronger Case than this, as it makes to a Forfeiture.

Mr. Serjeant *Darnel*: This must be settled by the Words of the Act of Parliament, which makes an Hiring for a Year necessary, whereas here there was not such an Hiring.

If there was a Fraud, that was fit for the Justices to determine on the Evidence, but they apprehended no such Thing, therefore this Court must judge on the Order.

If there was a Fraud, that will not make this a Settlement, the three Days Service after *Michaelmas* is not material.

Chief Justice: He did not receive his Wages till he had staid three or four Days after *Michaelmas*, which makes it plain that he staid to make up the Year. I think the Fraud is material; for there was a Case of a Woman big in one Parish, and shuffled into another, to prevent the Child's Birth in that

that Parish, and in consequence its Settlement there; and the Woman was brought to bed in the other Parish, yet upon the Fraud the first Parish was forced to maintain the Child.

Mr. J. Powis: The Fact shews the Fraud.

Mr. Serjeant Darnel: It will be hard to determine how many Days or Weeks shall be adjudged a Fraud, and no one can tell where it will end; therefore as the Law-makers have settled a fixed Time, we must stick to it. Adjourned.

The same Term.

Parish of St. George *against* St. Katharine's in Southwark.

69. **M**OTION to quash an Order for Removal of the several Children of *Anne Floyd*, from the Parish of *St. Katharine* to *St. George*. Mother gains a Settlement after Father's Death, Children shall follow it,

The Fact stood thus; *Anne Floyd* after the Decease of her Husband who was settled in *St. George's* Parish, removes into *St. Katherine's* with *B.* aged four Years, *C.* aged two Years, and *D.* aged six Years, and then takes a House of twelve Pounds *per Annum*; she lives there four Months paying the Poor's Taxes, but paying no Rent,

Rent; the Justices make an Order to remove her Children from thence to *St. George's Parish*, being the Settlement of their Father.

First Exception; The Order is naught as to the Children, who were under the Age of seven Years, for they being Nurse-Children must be settled with their Mother by Reason of Nurture. *Easter, 12 W. 3. Budge and Saunders. Easter, 2 Anne, Cumner and Milton.*

Second, It is a Question whether if the Mother settles herself and takes her Children with her as Part of her Family, that will not communicate a Settlement to them; it is certain, according to the Case of *Cumner and Milton*, that the Settlement of the Father where-ever it be, shall give a Settlement to the Children, why should not the Settlement of the Mother, in like Manner, if she gains a Settlement by any other Means than by Marriage? For by 43 *Eliz.* she is equally obliged with the Father to maintain the Children, and that Statute makes no Difference in the Sexes; so by 4 *Jac. 1. cap. 7.* she is equally punishable with the Father for deserting her Children.

It is true, if she gains a Settlement by Marriage, she cannot communicate a Settlement

ment to her Children, because she has it not in her own Right.

Contra; Children, though under the Age of seven Years, must be sent to their Father's last Settlement; and it will be another Consideration whether they shall be sent back to the Mother for Nurture.

It is a Question, whether taking an House of twelve Pounds *per Annum*, and living there four Months without paying any Rent, will gain a Settlement.

One cannot gain a Settlement merely by going to a Place as Part of the Family.

Mich. 10 W. 3. Wainford and Wentworth.

It does not appear on the Face of the Order, that the Children are removed from the Mother; she may be dead.

If the Children are once settled by the Settlement of their Father, they must do some Act to settle themselves elsewhere, as the Wife does by another Intermarriage.

Chief Justice: This Case, as stated in the Order, insinuates that she fraudulently hired this House to gain a Settlement without designing to pay any Rent, and as if she was not to be required thereto; but though she might not have paid any Rent at four Months end, yet she may have paid it now; there is no Distinction between the Settlement of Children with the Father or Mother, for they are as much hers as the Father's,

Note; Mr. Justice Eyre said that this Order was quashed, because Family was too general and uncertain, and it did not appear who that Person was that was Part of the Family.

Non-payment of Rent four Months after the Taking of a Tenement of 14*l.* *per Annum*, no Evidence of a fraudulent Taking.

Father's, and Nature obliges her as much as the Father, to provide for them; so does the Law and every Argument that holds for their Settlement with the Father, holds as to their Settlement with the Mother.

The Reason why Children shall not gain a Settlement where the Wife gains a Settlement only by Intermarriage, is because it is not her Family, but her Husband's, and she cannot give the Children any Sustainance without the Husband's Leave.

Since she is equally punishable with her Husband for deserting her Children, and therefore could not leave them behind her, they must gain a Settlement with her, Quashed.

The same Term.

Parish of Abergenny against Langhany.

Order removing Wife and Children too general; Ergo quashed as to Children.

70. ORDER to remove the Wife and Children of ——— from L. to A. without naming them; quashed as to Children, because too general, and Mich. 4 Geo. an Order was quashed on the same Exception.

The

The same Term.

Parish of Pawlet against Burnham.

71. **M**OTION to confirm an Order to remove *Hugh Pool* and his Wife, from *P.* to *B.* Consent to part, discharges the Service.

The Fact was, that he served one Year in *P.* and after was hired to serve one Year in *B.* he served his Year in *B.* save three Weeks, and then being a Covenant Servant parted with his Master by Consent, he deducting fix Shillings for the three Weeks, his Wages being three Pounds *per Annum*.

It was urged, that as he was a Covenant Servant he could not be discharged by Consent, and therefore continued a hired Servant for the Year.

Besides, that this was a Fraud to prevent the Settlement, since it did not appear that he grew sick or more unable to serve than when hired, and notwithstanding discharged.

Chief Justice: There is no Difference between a Covenant by Deed or by Parol as to a Settlement, for though the Consent does not discharge the Covenant, yet it does the Service, and the Act turns upon the Service.

No Difference between a Covenant by Deed or by Parol as to Settlement, for the Consent discharges the Service where there is no Fraud, tho' not the Covenant.

His

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His Master deducting six Shillings, his Wages being but three Pounds, shews that there was no Fraud or Temptation to the Man to go; but it seems to be the Man's Choice, and that the Master would have kept him.

Nothing can make this a Settlement, unless there be a Fraud apparent or expressed. Order quashed.

*The same Term.**Parish of Bramley against St. Saviours Southwark.*

Order removes *A. G.* and *R.* her Son, without saying Widow or Wife, and Order discharged at Sessions for insufficiency generally, yet the Order of Sessions was quashed, because naming her in the Order was sufficient.

72. **M**OTION to quash an Order of Sessions; to set aside an Order of two Justices for the Removal of *Anne Grey* and *R. Grey* her Child, the Order of the two Justices was set aside for insufficiency generally.

Exception; Though the Sessions need not set forth the Reason of their Judgment, but was generally quashed for insufficiency, yet they must make such a Description of the Person, as it may appear what Sort of Person he is; but here the Order does not say whether *Anne Grey* was a Widow or a Wife, (indeed it does say she had a Child) the

the Consequences of these Considerations are very different as to her Settlement. *Trin.* 4 *Ann.* in the Case of *Senwick* in *Kent*, an Order to remove the Child of ——— single Woman, was quashed; and in the Time of *W. 3.* a Child found in *Christ-Church* Hospital, and sent by an Order to the Church-wardens to be provided for, without saying that the Parents were unknown, was held wrong.

Here were several Adjournments, which (unless by Difficulty appearing to the Court) is not warrantable.

Contra; If the Sessions need not set forth the Circumstances or Qualifications necessary to gain a Settlement, it is well here, for they have set forth that she is likely to become chargeable.

Chief Justice: The Appeal is not to the Persons of the Justices of the Peace, but to the Court, and they may adjourn it; they need not shew what the Insufficiency is, they have Power to quash on the Order or Fact; but though they need not shew what the Insufficiency is, yet when it comes before us we must consider the Insufficiency or Sufficiency of the first Order.

Sessions may adjourn Appeals, and tho' they need not set forth the Reason of their Judgment, yet *Kings Bench* will judge of first Order.

It is a sufficient Description of any Person to name him or her; if she be a married Woman, it may alter the Judgment as

It is a sufficient Description to name him or her, if married; that is

Fact which
may vary the
Judgment at
the Trial.

If Order is
fixed on a par-
ticular Fact,
as a Child's
being found
at A. without
saying gene-
rally that it
is its last legal
Settlement,
it is bad.

the Fact happens, but this and such Ob-
jections are but in Point of Facts.

They say this is her Settlement, and is a
Fact proper to have been contested at the
Sessions, and the naming of two Justices
does not bind the Sessions.

As to the Cases quoted, it is true where
Justices fix an Order on a single Fact, there
it must be set forth; for if they say a Child
was found in ——— and thereby gained a
Settlement, if that be not good to gain a
Settlement, the Order is wrong; but if they
say generally ——— was her last legal Set-
tlement, it is well.

Note; Order of Sessions was quashed, be-
cause the Naming her by her Name in the
Order of Justices was a sufficient Descrip-
tion, and there was no other Exception
to the Order of Justices.

Michaelmas, first of King George.

Parish of North Nibley *against* Wot-
ton Undridge.

A. takes an
Inn for one
Year at six
Pounds five
Shillings from
Lady-Day
1714. about

73. **Q**uestion was, whether *G. Hicks,*
at *Lady-day* 1714. hiring an Inn
to hold for one Year at the Rate of six
Pounds five Shillings *per Annum*, towards
the End of *May* following, hiring a Mea-
dow

dow Ground till *Lady-day* following, was such a Hiring of a Tenement above ten Pounds *per Annum*, as to gain a Settlement, it being of several Possessions: (N. The Meadow had been hained up from *Lady-day* before, so that he had the whole Profits.)

the End of *May* following he takes a Meadow which had been hained from said *Lady-day* to hold to *Lady-day* following; it is a good Settlement.

Court: This is a good Settlement, for when other Lands are laid to it, it becomes an intire Tenement, besides the Value is principally respected, and not the Tenure: A Tenement of ten Pounds *per Annum*, hired but for one Month, would not make a Settlement, because he is not to answer ten Pounds Rent.

The same Term.

Elfley Lovat in Worcester against
Clent in Staffordshire.

74. **A**N Hiring and Service gains a Settlement notwithstanding Marriage within the Year.

Servant hired for a Year, and marries within the Year, gains a Settlement, even tho' removed by Consent of the Master within the Time.

N. In Case of *Farington*, one hired for a Year in *Farington* marries; two Justices remove out the Servant by Consent of Master to *Wilcote* in *Oxfordshire*, within the Year; upon Appeal of *W.* this Fact stated, Order confirmed, but *King's Bench* quashed it.

The same Term.

King against The Inhabitants of
Dumpleton.

A. is an Apprentice for seven Years at *D.* then rents a House at 20 s. per Ann. at *S.* and Land of 11 l. per Ann. at *H.* but did not live there; Settlement at *D.*

75. **J**OHN Ruck was Apprentice with his Father seven Years at *Dumpleton*, then went to *Sedgborough*, and took an House of twenty Shillings per Annum, and took Lands of eleven Pounds per Annum at *Hinton*, but did not live there.

On the State of this Fact, and on a Reference to two Judges of Assize, the Parish of *Dumpleton* was adjudged to be the last legal Settlement of the said *John Ruck*; which was also agreed by the Court of *King's Bench*.

The same Term.

Parish of All Saints Southampton
against Michael Woodstreet, London.

After Removal, cannot be sent to a third Place without appealing to the first Order.

76. **M**OTION to quash an Order of Removal of *Nort. Pool*.

Exception; He was sent from *Swindon* in *Wiltshire*, to *All Saints* in *Southampton*, who

who never appeal from that Order, but they send him on to *St. Michael*.
Quashed.

The same Term.

King against Miles.

77. **O**N a Motion to quash an Order of Bastardy, it was resolved, that if the Father run away, and returned, though fourteen Years after, yet an Order to fix the Child on him is good, notwithstanding the Statute of *Car. 2.* gives a Power to Justices to make an Adjudication behind his Back, and to charge his Effects, for there is no Statute of Limitation as to these Cases; nor is there one Instance where Justices have been restrained.

An Order to disburse the Parish Charges they have been at since the Birth of the Child, is good even for those Charges the Parish is at subsequent to his Age of seven Years.

It must appear in what Parish the Child was born, and that the Birth was in that Parish in whose Aid the Order is made.

It is not necessary to fix the Day of his Birth in the Order.

Order of Bastardy charges the Father, though he has been run away fourteen Years.

To reimburse Charges of the Parish since Birth, good, for those after Child is seven Years old.

Must appear in what Parish born, and that for whose good the Order is made.

The precise Day of the Birth not necessary in Order.

Sufficient to say it is a Bastard, without saying whether Woman single, &c.

No Security to perform an Order till Contempt of the first Order.

It is enough to say in the Order that the Child is a Bastard, without mentioning the State of the Woman, whether single, &c.

Security to indemnify the Parish is proper.

Security shall not be given for the Performance of an Order, till Contempt of the first Order.

The same Term.

King against Bingley.

No Indictment lies for suffering Fences to be out of repair.

78. **I**NDICTMENT against Defendant, that he unlawfully suffered his Fences to be down, to the great Damage, &c.

Exception; It is a Nonfeasance, and not indictable, therefore the Indictment was quashed.

The same Term.

Parish of Newark against Ruckworth.

79. **M**OTION to quash an Order of Removal.

Order to remove Children to their Father's last legal Settlement, referred to Judges of Assize.

It was an Order to remove the Children of *Ant. Wheelcroft* to ——— it being the Place of his last legal Settlement, and consequently of his Children.

Exception;

Exception; This Consequence doth not hold, for they may have gained a Settlement elsewhere.

Mr. Justice *Eyre*: I think the Order good enough.

Mr. Justice *Probyn*: Though it be a strong Presumption that the Father's Settlement is the Place of the Children, yet I think for the Uncertainty you had best refer it to the Judges of Assize.

N. Judges cannot refer the Examination of a Settlement to Judges of Assize, without Consent of Parties.

The same Term.

Parish of Appotens *against* Dunkswell.

80. **M**OTION to quash an Order of Settlement.

The Fact was, a Woman marries a Stroller who leaves her, she is sent by an Order of two Justices to her Settlement, previous to their Marriage.

N. His Settlement did not appear.

This is a proper Order; see the Case of *Dunspots* and *Wisborowgreen*. *Contra*; that Case is not like this, for a Man born out of *England* can have no Settlement here,

Order to remove a Woman to her Settlement previous to her Marriage must alledge the Husband dead.

Sessions Cases adjudged in the

but this Man being born here, must have a Settlement somewhere.

Chief Justice : As to the last Exception, it is said that upon hearing the Differences, &c. which is sufficient.

It does not appear here, but that the Wife is sent from her Husband ; if it had been said that the Husband was dead, in this Case, and that no Settlement did appear, I should think the Order good.

Besides, if a Woman marry a Man who had a Settlement and never used it, and she never there, she cannot be said to be last legally settled there according to the Act, which requires forty Days ; so if a Man had an Estate in a Parish, and do not live there, he cannot be sent there ; but if he had lived there forty Days, he had been settled there. Quashed.

The same Term.

Parish of Millbrook against St. John's in Southampton.

Motion to quash an Order, for that the Appeal was to Midsummer Sessions, when it should be Easter.

81. **M**OTION to quash an Order for Removal of *W. B.* from *M.* to *St. J.*

Exception ; The Appeal was to *Midsummer* Sessions, when it ought to have been to

to the *Easter*, which was the next Sessions, as appears from the Caption. What next Sessions is meant. 1 Sid. 149, 14, 326.

Chief Justice: We cannot determine it on View, because it depends on Fact; for the Order might not be served till after the *Easter*-Sessions was over, and till then they are not aggrieved.

And then is their Time to appeal.

This Exception in the Case of *Risby* over-ruled.

Motion to quash an Indictment for exercising a Trade in *P.* in *Cornwall*, not being Apprentice thereto.

Exception; It does not extend to Vills. 1 *Mod.* 26. But not allowed.

Hilary, first of King George, 1714.

King against Kingsmill.

82. **O**N Indictment to repair an Highway, the Court cannot grant a View by Consent, though a private Person prosecutes. On Indictment to repair Highways, Court cannot grant a View.

The same Term.

Parish of Stoke-Fleming *against* Berry
Pomrey.

Apprentice
may gain a
Settlement,
though his
Master has
none.

83. **M**OTION to quash an Order of Sessions for the Settlement of *Anne Elford*; the Fact specially stated in the Order was, that *A. E.* a poor Child in the Parish of *Stoke-Fleming*, was bound an Apprentice to *S. Perry*, who was a settled Inhabitant, and Owner of some Lands which she had in the Parish of *Stoke Fleming*, and there served about two Years; then *S. P.* removes from the Parish of *Stoke-Fleming* to the Parish of *B. P.* where she lived with her Son, but that coming without a Certificate, and being a Person of Ability she gained no Settlement there, and that *A. Ellford* served her there the Rest of the Apprenticeship; upon which the Sessions confirm the Order of Justices, by which she was settled at *B. P.*

It was urged, that as an Apprentice can only gain a Settlement in Consequence of his Master, he being not able, during his Apprenticeship, to do any Act to gain a Settlement; *A. Ellford* in this Case cannot gain a Settlement in *B. P.* where her Mistress

strefs had no Settlement, but must be settled at *Stoke-Fleming*, where it is admitted her Mistress had a Settlement.

Besides, the Act of 3 & 4 *W. & M.* says, that if any Person shall be bound an Apprentice by Indenture, and inhabit in any Town or Parish, such Binding and Inhabitaney shall be adjudged a good Settlement.

This is not like the Case of an hired Servant, who gains a Settlement by his Service, though his Master has none.

Contra; It was urged, that as an Apprentice gains a Settlement in his own Right, not in Right of his Master, as a Child in Right of his Father, he may gain a Settlement, though his Master has none.

Chief Justice: It is admitted that a hired Servant may gain a Settlement in a Parish by Service, though not hired there; and I know no Difference in the Words of that Clause and this, for they are altogether as strong, *viz.* That if any unmarried Person, not having Child or Children, shall be lawfully hired into any Parish or Town for one Year, such Service shall be adjudged a Settlement; and the Order was confirmed.

The

The same Term.

Parish of old Newton *against* Stonham.

Order not ap-
pealed against,
absolute.

84. **I**F an Order be made which is not appealed against, it becomes absolute, and makes a Settlement.

The same Term.

Newark *against* Worham.

Certificate
Person, when
chargeable,
shall be re-
moved to the
Parish giving
the Certificate,
though no
Parishioner
there.

85. **C**HIEF Justice said, that if a Man comes into a Parish by Certificate, and stays there till his Children actually become chargeable, then he by 12 *Ann.* shall be removed to the Parish which gave the Certificate, though he had not before any Settlement there.

Easter, first of King George, 1715.

King *against* Gully.

Poor; Order
to maintain
them, must
mention them
to be poor and
impotent.

86. **M**OTION to quash an Order on *T. Gully* to maintain *S. Gully* his Daughter; the Order was, it appearing that *S. Gully* is a poor and destitute Person, we do

do order that *T. Gully* allow her two Shillings and six Pence a Week for her Maintenance, till the Court further order.

First Exception; This Order is founded on 43 *Eliz.* and she is not described to be such a Person as is intitled to Relief within the Statute; for it is not said that she is unable to work, &c. but only that she is poor and destitute, which is not sufficient.

Second; That the Continuance of the Payment till Court shall farther order, is unjust; because no further Orders could be made till the next Sessions, and before that the Father might possibly become unable to relieve her, or she may be able to work for herself. But not allowed; the Court being fittest to judge in that Matter.

Chief Justice: This Person is not brought within the Description of the Act; for she is neither said to be poor old, or poor lame, or poor blind, or poor impotent, or a Person unable to work, and one of these Disabilities is required by the Act; poor and destitute is uncertain and not a Description. Quashed unless Cause.

The

The same Term.

King against The Inhabitants of
Brightwell.

Hiring and
Service for a
Year a good
Settlement.

87. **A**N Hiring three Weeks after *Michaelmas* to *Michaelmas*, and then an Hiring for one Year, and a Service for eleven Months, adjudg'd a Settlement, according to the Case of *Overton* and *Stivington*, 10 *W.* 3.

Note; Chief Justice said that if there was a Service for a Year, on a Hiring from Week to Week, and then a Hiring for a Year, and serving for forty Days, that he should adjudge that a Settlement; Reason is, because till the last Statute was made, an Hiring for a Year, and forty Days Service made a Settlement, in regard that the Hiring for a Year shewed that the Person was not likely to become chargeable, for that he was able to work, &c. So forty Days is a good Settlement to an Apprentice in respect of his Skill and Art, by which he is supposed unlikely to become chargeable: So a Person that has paid Parish Dues, or served Offices in a Parish, gains a Settlement by forty Days, because he is supposed a Person of Substance, and unlikely

unlikely to become chargeable, who is so called upon; but the late Act requiring a Service for a Year as well as an Hiring, we think it sufficient if the Words be answered, considering this with the Design of the former Statutes.

Easter, second of King George.

The King against King.

88. **I**T was moved by Mr. *Whitaker* to quash a Conviction grounded on the Statute of 5 *Anne*, c. 14. for keeping a Gun not being qualified.

Exceptions to a Conviction on the Statute 5 *Anne*, c. 14. for keeping a Gun not being qualified.

The Exception taken was, that the Statute 5 *Anne* extends not to keeping a Gun; for the Words are, if any Person shall keep or use (not being qualified according to the Act) Tunnels, Hare-Pipes, &c. or any other Engine, for the destroying of Game, (omitting the Word *Gun*) shall forfeit five Pounds: So that the general Words *Or any other Engine*, must be understood to be such Engines as are directly for the Use, and can be for no other Purpose. Whereas a Gun is proper to be kept for the Defence of a Man's House, and this Construction is enforced by 22 & 23 *Car.* 2. c. 25. for there a Gun is forbidden

bid expressly (tho' without a Penalty) by Persons not qualified.

To which *Parker*, Chief Justice, and *Prat* Justice, agreed and said, that this Act mentioning *Tunnells*, *Harc - Pipes*, &c. which are Engines framed for no other Purpose than for the Destruction of Game, and concluding with the General Words, *Or any other Engine*, these Words must be construed to mean such Engines of the same Nature as were before mentioned, especially since the Word *Gun* was omitted in this Statute, all the other Words in the 22 & 23 *Car. 2.* expressly mentioned, and that this Construction ought the rather to prevail, since a Gun is sometimes necessary for the Defence of a Man's House.

But Mr. Justice *Powis* and *Eyre* were of the contrary Opinion, for that it was called an Engine for Destruction of Game, in 22 & 23 *Car. 2.* and prohibited to be kept by that Act, and made liable to a Seizure, it shall be taken to be an Engine for Destruction of Game within the 5 *Anne*, that Act being made to enforce all other Laws against destroying the Game. *Note*; it was said by Lord *Parker* in arguing in this Case, that Walking about with a Gun with Intent to kill Game, will be Evidence of using it for that Purpose.

The Court being divided it was adjourned.

The

The same Term.

Parish of St. Peters *against* Hallowell
in Oxford.

89. **Q**uestion was whether *Francis Mil-*
lton being a certificate Person Hiring and
 from St. *Peters*, and hired by *John Ploston* Service for
 at *Lady Day* 1713, to serve him for one forty Days
 Year, should gain a Settlement in *H.* before the late
 notwithstanding Statute 12 *Anne*, which says Act gained a
 no hired Servant, coming by Certificate, Settlement.
 shall gain a Settlement after 23d *July* 1713.

It was objected, that though the Hiring
 for a Year was before the Act, yet as the
 Service was not performed, consequently
 no Settlement gained before the Act, she
 should not gain a Settlement in *H.* and
 urged, that the Words of the Act imported
 as much.

Chief Justice: Here was a Service for
 forty Days after the Hiring, and therefore
 the Settlement gained before the Act was
 made, unless there be somewhat to defeat
 it; for if she had been hired in *H.* and
 served forty Days, and after her Mistress
 moves from one Parish to another, and stays
 not long enough in any for her to gain a
 Settlement, she shall have a Settlement in *H.*
 Shew Cause.

The same Term.

King against Parish of Limehouse.

Order for succeeding Church-Wardens to reimburse former ones, not good.

90. **A**N Order for the succeeding Church-Wardens to pay sixty Pounds to reimburse the former Church-Wardens. This is improper.

In *Queen and Tawny*, *Mandamus* was sent to make a Rate to reimburse Church-Wardens, and upon the Return it was held improper. The 43 *Eliz.* has empowered Justices to make Rates to provide for casual Poor, but not to reimburse, that Act only directs that the Surplus raised by Church-Wardens shall be paid over, and does not suppose they can be out of Pocket; for they have power to make as many rates as will reimburse during the Office.

Mr. Justice *Eyre*: An Order to reimburse out of Money to be raised would be wrong, as in Case of *Queen and Tawney*. But this is only a Direction to reimburse the Church-Wardens out of Monies that were paid over by the Overseers by Mistake, so that this was Money raised during his Office, and subject to the Account. Ad-journed.

Trinity

Court of King's Bench.

Trinity, 1 George 1715.

Parish of Alfly against Rumfly.

91. *B.* Is removed from *R.* to *A.* and adjudged likely to become chargeable to *A.* and there is no Adjudication that he is likely to become chargeable to *R.* the Place whence he is removed.

In Orders of Removal the Words *likely to become chargeable* are necessary.

Court: We are not to remove a Man from his Residence, unless it be plain that he is likely to become chargeable, and not argumentatively, because he is likely to become chargeable to one Place, that he is likely to become chargeable to another.

A Man may be likely to become chargeable to one Place, and not to another, on account of Work which he can never want there (as in Coal-Mines, &c.) which he may want in another. Quashed.

The same Term.

King against The Inhabitants of Brag.

92. *A* N Order of Justices is removed by a *Certiorari*, and there is a Variance between the Return and the original Order, *viz.* in the original Order it is said, *Vol. I.* H that

Orders removed by *Certiorari* not amendable even by Consent.

Sessions Cases adjudged in the

that *Francis Word* was a Servant in Husbandry, and in the Return of the Clerk of the Peace it is said, that he was a hired Servant. *Note*; The Parties consented to amend this.

Mr. Justice *Eyre* said that the Court never suffered any Amendment in the Body of the Order; that a Caption might be amended the same Term, but not even that in a second Term.

The Parties Consent signifies nothing, for that it was not an Amendment of any thing transacted between the Parties, but of a Justice of Peace's Order.

The Master said it was never done.

The same Term.

**Parish of Hitchin, Hotham *against*
Sutton Balans.**

Confirmation
on Appeal fi-
nal.

93. *FRANCIS Everet* the Son of *Robert Everet*, of *Otham*, is removed by Order of two Justices from *Sutton* to *Otham*, *O.* appeals to the next Sessions against this Order of the Justices, and on the Appeal, *O.* is adjudged to be his last legal Settlement, and the Order confirm'd; afterwards the Parish of *Otham* removed him, by the Name of *F. Everet* the Son of *Robert Everet* of *Hitchin*, by an Order of Justice to *Hitchin*.
In

In this Case it was resolved as formerly in the Case of *Ryslip, Hendon* and *Harrow*, that if a Person be removed from *A.* to *B.* and *B.* appeals against this Order, and it be confirmed, that Judgment is final, and they are tied down by it, so that they can never appeal on Pretence of a subsequent Settlement.

And that if in such a Case there be different Descriptions of the Person in the last Order, from what was in the former, and Affidavit be made that there is a Question about the Identity of the Persons, the Court will direct a Trial whether it be the same Person or not.

Hilary, second of King *George*, 1715.

Parish of *Elfing* against The County-Gaol of *Herefordshire*.

94. **A** Bastard was born in the County-Gaol.

Bastard born in a Gaol, settled with the Mother.

Question was, whether the Settlement of the Child should be in the Parish where the Mother had a Settlement, or in the Gaol.

On Reference the Judges of Assize resolved the Settlement to be in the Gaol, and accordingly an Order was made by two

H 2

Justices,

Sessions Cases adjudged in the

Justices, which on Appeal to the Sessions, was quashed for want of Form, and a contrary Order made, which the Court was now moved to quash, and to make a new Order according to the Opinion of the Judges of Assize.

Chief Justice: It has been held that People in the House of Correction ought to be considered as Inhabitants of the Place they were of before; for they are put there only for safe Custody.

Resolved that the Settlement was with the Mother.

*The same Term.**Stone's Case.*

Putative Father to pay Weekly for a Bastard, and give Security, Order quashed as to Security.

95. **O**Rder by Justices, that *Stone* should pay to ——— Parish, towards Maintenance of a Bastard Child of his, two Shillings and six Pence *per* Week, till he should be twelve Years old, and that then he should give five Pounds to put him out Apprentice, and farther, that he should give Security for the Performance of the Order.

Several Cases cited out of *Keble*.

Chief Justice: The Cases in *Keble* are not Law; they go upon a wrong Foundation, for in them it is supposed, that the
Act

Act was made only to relieve the Parish from the Burthen of such Children; but the Statute had other Views, for it is likewise that the Child may have somewhat to live on, and also for a Punishment to the Offender. And by the Court quashed as to the Security only.

The same Term.

King *against* The Inhabitants of Clerk-
enwell.

96. **M**OTION to quash a special Order of Sessions, reciting that there was an Appeal to them against a Poors Rate, that they referred it to two Persons to examine the Matter, and to report to them the Case, and what they should think proper to be done in it. The Referees after Examination reported, and the Justices accordingly ordered the Rate to be in this manner; that all Persons who were Possessors or Occupiers of Land or Houses, &c. within the Parish, should be rated for so much personal Estate and Rents as they were charged for in the King's Tax Book, with an Exception of such as are likely to become chargeable, &c.

Justices cannot delegate their Power, but may refer a Rate to be examined.

Sessions Cases adjudged in the

First Objection; That the Power of the Justices was delegated by them to another which they cannot do.

Secondly; That it was unequal, and not as it ought to be; for this having Reference to the King's Tax, no one by Virtue of this can be charged for any thing he is not charged for in the King's Book; and though several will not be charged for so much as they ought, for there are several things which are not chargeable with the King's Tax, which are chargeable with the Poor's Rate, &c. as Charities, all personal Estates in the Funds, &c.

Besides, there are great Abuses in the King's Tax, several People not charged that ought; others with not so much as they ought, and others with more in Proportion to other People.

Besides, the Book is not to be come at by every one.

Thirdly; This Order is made without quashing that on which the Appeal was made, so that there are two Rates on the Parish instead of one, and they are now actually levying on the first.

Chief Justice: Justices cannot delegate their Power to any, but this is not so, for what is done is only to take off the Trouble of the Examination of the Court, and which is

is almost impossible for the Court to do, it is only in Assistance of the Court, and what they reported might be excepted against, by any one that imagined himself injured, and must be, as it was in this Case, the Act of the Court, by its agreeing to it, and ordering that the Rate shall be observed and levied.

These Persons were like Masters in Chancery. If the Justices have looked into the Rate referred to, it is the best and most proper way that they can take, to order that such a Rate or Book shall be observed; for though it may possibly be unequal for the Reasons given, yet it is probably the most equal that can be made; for it is impossible to make one that shall be in every Instance equal.

The Money in the Funds seems considerable and apparent in the Parishes about *London*, because there are always some who have Money in them. But in others farther off and in the Country it is not; because in these they are scarce known, much less made use of. As to the making a new Rate, he said he supposed it was no more than altering the old one, by writing it fair in another Piece of Paper, which is better than by putting in that which is wanting in the Charge of some, and blot-

ting out that which is too much with respect to others, in the old one.

Court ordered Counsel to be heard on both Sides.

Easter, second of King George.

St. Giles's *against* St. Margaret's Westminster.

Woman marries a Man without a Settlement, does not lose her own on his Death.

97. **A** Woman having gained a Settlement marries a Foreigner.

Question, Whether she shall not so far partake of the Circumstances of her Husband, as to lose her former Settlement; for if she doth not partake of the Fate of her Husband, it will cause a Divorce.

Contra were urged the Case of *Dunspole* and *Wisborough Green*, and of *Hanny* and *Maston*.

And that in this Case the Man was dead, so that it can cause no Separation.

The Court seemed to think, That the Settlement is revived, being only in Suspence during the Life of the Husband.

Note; Chief Justice said in this Case, that if a Woman having a Settlement, marries a Man that has none, that if the Husband dies she must be sent to her last legal Settlement before Marriage.

It was urged by Serjeant *Darnel*, that as her Husband was not removeable from the Place where he was, that she was settled at the Place where she last was forty Days.

But by *Chief Justice*: Where a Person stays forty Days in a Place, whence they have a Right not to be removed, that gains a Settlement; otherwise where they only stay in a Place because they do not know where to remove them.

Chief Justice said in this Case, that he did not know that a Foreigner had a Right to be maintained in any Place to which he came, but that they might let him starve.

Adjudged in *Hilary*, 3 *George*, That she should be sent to her Settlement gained before Marriage, though the Order affirmed as to her; but this Order sending a Child above seven Years old from *St. Giles's*, which was the Place of his Birth, to *St. Margaret's*, with the Mother, which was her last legal Settlement before Marriage, was quashed as to the Child.

Trinity, second of King George, 1716.

Parish of Pancras *against* Rumbald,
County of Suffex.

Justices may
superfede their
own Order
before execu-
ted.

98. **T**WO Justices of Peace 3d Janu-
ary make an Order to remove a
poor Person from *Pancras* to *R.* upon Sug-
gestion that he rented not a Tenement there
of 10 *l.* *per Annum*, and after, *viz.* on the
5th of *January*, on further Information,
make another Order in the Nature of a
Supersedeas, and do thereby, as far as they
can, to revoke their former Order; the
Suggestion upon which that was made be-
ing false. Therefore,

It was moved, that the last Order in Na-
ture of a *Supersedeas*, might be quashed,
the Justices having no Power to make it.

Chief Justice: It is very proper for them,
if they are misinformed, to supersede the
Order made on such Misinformation.

It would be very inconvenient for us to
quash this last Order, for that would make
it in Effect irreversible, since they have
acquiesced under the Validity of the *Super-
sedeas*, and slipt the Appeal.

Indeed it would make a Difference if
the Man was actually removed upon the
first

first Order. But this Order not being upon the Face of it void, it is not proper to quash it; it should appear that he was removed.

There is no Inconvenience in not quashing the *Supersedeas*, for you may go to two other Justices to remove the Man, if he be not well settled there.

Lord Chief Justice *Prat* : Before Removal the Justice's Authority is not executed, but after Removal it had been executed, and then the *Supersedeas* had been void, so nothing done in it.

The same Term.

Parish of Chatham in Kent *against*
Shardon in Shropshire.

99. **O**RDER of Removal returned in Paper. Order of Removal returned in Paper, ill.

The Court seemed to think, not good Return, and Cause to quash, but the Parties not complying with what the Court thought reasonable (*viz.* to refer it to Judge of Assize) Court refused to quash though after referred by Consent.

Michaelmas,

The King against Higworth, Wilts.

Order to
maintain a
poor Person,
must say that
he is impotent.

100. **O**RDER of Sessions to pay *A.* and *B.* being poor Persons, three Shillings *per* Week, so long as they shall continue poor.

First Objection; That it did not appear that there was any Appeal to Sessions; and that the Sessions had no original Power to make Orders for Relief, and likened to Cases of Settlements. But not allowed; for in Cases of Settlements, Order at Sessions is final, and hinders Appeal, but succeeding Sessions may alter Orders for Relief of Poor made in a former Sessions.

You will not find in any Act any Power, that either the Justices or Sessions have to make Orders for Relief of Poor, but they having taken upon them such Power, 8 & 9 *W.* 3. seems to admit it, and directs in what manner Poor shall be relieved, &c.

Secondly; The Order being to relieve *so long as they continue poor* is naught, but not allowed; for by *Chief Justice*: If they have Power to relieve a poor Person, they may relieve him so long as he continues poor, and the Order ought to be provisional,

tion, i. e. so long as the Cause of their Relief lasts, and it ought not to be absolute till the Order be repealed.

Thirdly; That it does not appear that they were impotent, &c. and unable to maintain themselves. Therefore quashed for the last Exception.

See the Case of the *Queen* against *Gully*, 86.

The same Term.

The King *against* Stoke Gumber.

101. **J**USTICES make an Order, that whereas the Poor had time out of Mind been relieved on *Saturday*, they should be relieved as usual on *Saturday*, and not on *Sunday*. Justices may change the Day of distributing Bread.

Motion to quash. But the Court said, that the Justices may order the Day of distributing Bread to be changed.

The same Term.

Parish of Worksworth *against* Basington.

102. **O**RDER of Removal was, Whereas it appears to us on Complaint, that Orders of Removal, the Words likely to become chargeable, necessary.

Sessions Cases adjudged in the

that such a one came into the Parish of *W.* contrary to Law, and is likely to become chargeable, we adjudge *B.* the Place of his last legal Settlement. On Motion to quash it, Objection, that there was no Adjudication that he was likely to become chargeable. But not allowed; for there are only two Adjudications, and it is included under the first, and by Chief Justice, it is one of the best Orders I ever saw.

By Lord Chief Justice *Prat* it had not been well, whereas it appears to us by Complaint. Confirmed.

The same Term.

Parish of Upton in Worcestershire,
against Chepel Honiborn in Gloucestershire.

In Order of Removal, not said that the Pauper came into the Parish against Law, quashed unless Cause.

103. **M**OTION to quash an Order of Removal.

First Objection; Complaint that *A.* is likely to become chargeable, but not said that he came into the Parish against Law, it is ill, though in the Adjudication it be said so, for the Adjudication cannot help it more than a Conviction can help an imperfect Information, or than the finding a Jury can help an immaterial Issue. But not allowed;

allowed; for Complaint that he is likely to become chargeable to *Chepel Honiborn*, but only that he was last legally settled at *Upton*, and for this Cause quashed, unless Cause.

The same Term.

Parish of Woverton against Stoke Cultrum, Cumberland.

104. **S**essions on Appeal discharge *Woverton* from keeping—and send her to *Stoke Cultrum*, to be there provided for according to Law.

Objection; That it is ill because not conclusive.

Chief Justice: It is very well, for it is no more than that while she stays there they should provide for her as by Law they ought, and does not conclude them from removing her elsewhere.

Sessions may send a Pauper to her Settlement to be there provided for according to Law, held good.

The same Term.

The King against Parish of Pincehor-ton, Oxford.

105. **A** Greed in this Case, that a Wife is to be sent to her Husband's Settlement

Wife sent to her Husband's Settlement, though never lived with him there.

Sessions Cases adjudged in the

tlement though she never lived with him there.

Note; Order was, Whereas *A.* was born in such a Parish, we do therefore adjudge him to be last legally settled there;

By Mr. Justice *Eyre* held well, Birth being a good Foundation of Settlement, and we are not to imagine Cases (as that his Father or he might do some Act to gain a Settlement elsewhere) to make it ill.

The same Term.

The King *against* Twiford.

Order to pay
to succeeding
Overseers 8*l.*
quashed, be-
cause not said,
why.

106. **O**RDER to pay over to succeed-
ing Overseers eight Pounds,
quashed, because not said, Wherefore, &c.
and there being a Note given, by Order of
Sessions, for the Payment of this Money,

By Mr. Justice *Eyre*, the Order being
quashed, the Note must be delivered up.

The same Term.

Parish of Trinity *against* Shoreditch.

Apprentice
settled where
he serves the
last forty Days.

107. **I**T was agreed that *Tanner* should
serve *Green* as a *Barber* for seven
Years, and in order thereto was to be bound
to

to *Trewby* a Vintner, and accordingly was Bound to *T.* and served *Green* three Years in *Trinity* Parish.

Adjudged well settled at *Trinity*, *Trewby* being as a Trustee for *Green*, and the Service to *Green* is as much within the Act as if bound to him.

In like Manner as where an Apppprentice is turned over, in which Case the first Master is as a Trustee for the second, and the Place where such Apppprentice lives forty Days is the Place of his Settlement.

The same Term.

The King against Bond.

108. **I**ndictment on the 10 & 11 W. 3. for erecting a private Lottery: quashed, for there is a Penalty given by the Statute, and a Method chalked out by the Statute, viz. by Action to recover it.

Indictment quashed, the Statute requiring an Action.

The same Term.

The King against Gill.

109. **E**xception to an Order of Sessions, that an Apppprentice was discharged in the Absence of his Master, at least it did

Order for discharging an Apppprentice quashed, for that it did not appear the Master was summoned or appeared.

not appear that the Master was summoned or was present, therefore the Order of Sessions was quashed for this Exception.

Easter, third of King George, 1717.

The King against Barnes.

Sessions cannot set aside the Assignment of an Apprentice, but if the second Master does not provide for him, the first may be compelled.

110. **J**USTICES at Sessions, without Complaint, make an Order for the setting aside an Assignment of an Apprentice, and that the old Master provide for him. It being moved to set aside this Order, *Glyde* Serjeant urged in Maintenance of it, that it was not a judicial Order, but only a Regulation, and no more than the Law said. By *Parker*, Chief Justice, Sessions cannot set aside an Assignment, and the Master of a Parish Apprentice may assign him over as well as any other. The Jurisdiction of the Justices extends no farther than to the Person of the Master, to force him to take care of his Apprentice; but in what manner he does it, whether in his own House or otherwise, is nothing to them.

In the Indenture the Master covenants to provide for and instruct; does he not answer the Covenant in turning him over to another who does provide for and instruct him?

I

But

But if the Assignee of the Apprentice does not provide for him, the first Master may be compelled to do it, and he may take his Remedy over. Quashed.

The same Term.

The King *against* The Parish of Stoke Guerry.

111. **A**N Order to pay Money to a poor Person, without saying that he was poor and impotent, and not able to work, (which is the Description given in 43 *Eliz.* of those Persons who are to be relieved with Money) was quashed on the Authority of the Cases of the King *against Gully, Easter, 1 George*, and of the King and *Highbworth, Mich. 3 George*. Cases cited 1 *Keb.* 489. 2 *Keb.* 643, 744. 5 *Mod.* 197.

Order to maintain a poor Person, must alledge him to be impotent.

The same Term.

Parish of St. Olives Old Jury, London, *against* Mile-end, Middlesex.

112. **I**T was moved by Mr. *Corbet* to quash an Order of Sessions, in which the Case being specially stated, it was thus.

I 2

A Cob-

Apprentice
bound to a
Cobler, but
lodges in an-
other Parish,
gains no Set-
tlement.

A Cobler took a Stall in *St. O.* just big enough for himself to sit in, at ten Pence *per Week*; he afterwards took one *John Owen* an Apprentice, who served him in the Street, and ran of his Errands for six Months, and both the Master and the Apprentice lodged out of the Parish of *St. O.* and each of them in different Parishes. The Sessions adjudged this to be a good Settlement in *St. O.*

Serjeant *Darnel* urged in Maintenance of this Order of Sessions, that the Service and not the Lodging is esteemed the Inhabitaney, and likened it to the Case of a hired Servant, to a Sojourner who gains a Settlement by Virtue of his Service; besides that the Service is notorious, whereas the Lodging is private; that it was not necessary to lie in a Parish to make one an Inhabitant; for a Person possessing Lands, though he lives out of the Parish, is an Inhabitant for Repairs of the Church.

Parker, Chief Justice: Is the Cobler an Inhabitant by Virtue of his Stall, or a Resiant that may be summoned to the Court Leet? My Lord *Coke* says, that where a House stands in two Leets, the Owner is Resiant in that Leet where his Bed stands.

This is not like the Case of a hired Servant to a Sojourner, for a Sojourner is an Inhabitant. A Porter plying at the Corner

of a Street may as well give an Apprentice a Settlement in the Parish where he plies.

A Man possessing Lands in a different Parish from that in which he lives, may stand in the Place of an Inhabitant, to pay as such, but is not properly an Inhabitant.

Inhabitancy is a Qualification requisite for an Apprentice to gain a Settlement. I do not see that there is a Settlement in any of these three Parishes, for he was not with his Master. Quashed by the Court.

Easter, third of King George.

Parish of St. Andrews *against* Parish of St. Brides.

113. **U**PON a special Order of Sessions, the Case appeared to be, that one *Elizabeth Francis* being Covert, parts from her Husband, and after six Years Separation thinking her Husband was dead, marries one *Don*, and has eight Children all born in *St. Mary-overs*, whereof three are living, and christened by the Name of *Don*; *Don* the second Husband dies, and nine Months after his Death she moves into the Parish of *St. Andrews*.

A Woman having Children after seventeen Years Separation from her Husband, who never had access to her, therefore Children illegitimate, and settled where born.

Upon a Question at the Sessions, in what Parish these three Children were settled, they adjudged them to be settled in *St. Brides*, the Place where her first Husband

was last legally settled. (*Note*; the Order did not set forth that he was then an Inhabitant there.) *Note*; it appeared by the Order that he had not seen her for seventeen Years, but that they had both lived in *London* all the while.

It was moved by Mr. *Birch* to quash this Order of Sessions, for that the three Children were Bastards, and were therefore settled at the Place of their Births. *Salk.* 123, was cited as a Case in Point, where it is said, that if a special Verdict find that the Husband had not Access after Separation by Agreement, the Issue is Bastard, for such Finding destroys the Presumption that he had Access. So here the Order setting forth that he had not seen her seventeen Years, but had lived with another Man, &c. sufficiently destroys the Presumption that he had Access, for the special Matter set forth in the Order is as strong as the Finding of a Jury.

It was insisted by Mr. *Morly*, *contra*, that the Husband being within the four Seas, the Law would presume Access, 7 *H.* 4. fo. 9. 1 *Ro.* 358, and likewise insisted that the Wife was not good Evidence, it being against her Husband. But not allowed, for the Parishes are only concerned.

By *Parker*, Chief Justice, this differs not from a special Verdict as to the Presumption; if a Woman take a second Husband

band and live with him, why should not the Law look upon the Issue as his, especially when they are baptized as his Children by his Name.

Besides, the Presumption holds only till the contrary is proved, and here is as strong a Proof as possible.

The Order was quashed *nisi*, as to the Children, and *the Settlement of the Mother was not controverted*.

Note; It was formerly resolved in the Case of the Queen and Inhabitants of *Westminster*, that it shall be presumed that a Child born after a Divorce from Bed and Board, is a Bastard, unless the contrary be proved on the other Side. See *Co. Lit. Ab.* 329, 33 a.

Note also, that in this Case *Parker*, Chief Justice, said that he did not see how these Children, if they had not been Bastards, could have a Settlement in St. Brides, *they never having been in St. Brides, nor sent thither* (for ought appeared in the Order, it being only said, that *Francis* was last legally settled there, and not that he was then an Inhabitant in *St. B.*) while the Father was there, and " That they could " not be sent to a Place, where the Father had only a Right to a Settlement, " and likened it to the Case where a Man " has an Estate in a Parish, he cannot be " sent

Sessions Cases adjudged in the

“ sent thither, unless he had lived there
 “ forty Days, but that if the Children had
 “ been there with the Father forty Days,
 “ then they would have had a good Settle-
 “ ment.”

Trinity, third of King George, 1717.

Parish of Fishel against Angor.

Sessions have
 an original
 Jurisdiction to
 charge Per-
 sons out of a
 Hundred, as
 also in rela-
 tion to Ap-
 prentices.

114. **I**T was objected, by Mr. *Reeve*, to an Order of Sessions, charging Occupiers of Land in *A.* (which is really an extraparochial Place) with a Contribution to the Relief of the Poor of the Parish of *F.* in another Hundred, that it did not appear they had been before two Justices, who had adjudged that there was no Place within the Hundred which was able to assist the said Parish, which by the 43 *Eliz.* is required, before the Justices at Sessions can have any Jurisdiction to charge Persons living out of the hundred: But this Objection was not allowed.

For by the Court, the Statute gives two original Jurisdictions, and for two Purposes, viz. to two Justices to charge the Persons within the Hundred, and to the Sessions to charge Persons out of the Hundred; and the Sessions do not proceed on Appeal, but on their own Jurisdiction, and there is no
 occa-

occasion for any other Declaration than such as to intitle them to a Jurisdiction ; and that is sufficiently set forth in the Order, it being said that the People within the Hundred are unable, &c. besides, the Justices doing nothing is sufficient to give the Sessions a Jurisdiction, for that it appears sufficiently to them, that the Hundred is unable. To what end should two Justices adjudge the Hundred insufficient ? for notwithstanding such Adjudication ; if any other two Justices should charge any Persons within the Hundred, that would be a good Charge, and exclude the Jurisdiction of Sessions, for the said two Justices are only Justices within the Division ; besides, an Adjudication is only to maintain their own Acts, and not to maintain the Acts of others.

In the Case of Apprentice there is a Direction to two Justices to endeavour to reconcile the Master and Servant, &c. yet it has been adjudged that they may go in the first Instance to Sessions, although there is something prescribed to be done by the Justices ; *a fortiori* here, there being nothing prescribed to be done by the Justices, the Hundred being unable, &c.

The

The same Term.

Parish of South Sydenham against
Lamerton.

Renting ten
Pounds *per*
Annum, being
in two di-
stinct Tene-
ments in dif-
ferent Pa-
rishes, gains
a Settlement.

115. *A.* And *W.* were removed from *Lamerton* to *South Sydenham*, having there taken a Lease of Lands of the Value of thirteen Pounds *per Annum*, for thirty-three Years, determinable on three Lives, of which Lands to the Value of four Pounds ten Shillings lay in *S. S.* the Messuage and the rest lay in *Lamerton*, and the Rent reserved was but seven Pounds.

Two Justices adjudged that *A.* was settled in *S. S.* where he had an undoubted Settlement previous to the Lease, which Adjudication was confirmed by the Sessions. Mr. Serjeant *Glyde* moved to quash this Order.

Mr. *Reeve*, in Maintenance of them, urged that the Statute 13 & 14 Car. 2. cap. 12, says, that a *Person* having a Tenement under the Value of ten Pounds, &c. and that the reserved Rent must be the Rule and Measure of the Value, and though the Tenement be worth thirteen Pounds, that made no Alteration.

By the Court: The Quantity of the Rent is not material, but the Value of the Tenement,

Tenement. If there be a Lease of Lands worth ten Pounds, and a fine be paid, and twenty Shillings only reserved, it is the same thing.

The Difficulty is that the Lands, to the Value of ten Pounds, lie not all in one Parish; but if the Tenement be intire, though the Lands be in different Parishes, it seems to be a Tenement of ten Pounds *per Annum* where the House is; otherwise where the Tenements are distinct and lie in different Parishes, as if a Tenement of eight Pounds lie in one Parish, and a Tenement of three Pounds in another.

A Person that can rent ten Pounds *per Annum* is presumed unlikely to become chargeable, therefore it is hard to send him away. But by Mr. Justice Eyre, under ten Pounds, and likely to become chargeable, are convertible Terms. Orders quash'd.

The same Term.

Parish of St. Mary Colechurch against
The Parish of Radcliff.

116. *J.* Coleson was Apprentice to *A.* a Seafaring Man, and served him a Quarter of a Year, at his House in St. Mary Cole-

Apprentice
bound to a
Seafaring
Man lodges
on board a
Ship, gains no
Settlement.

Sessions Cases adjudged in the

Colechurch in the Day-time, but lodged on board a Ship in the *Thames*.

The Justices at Sessions adjudged this to make a Settlement in *St. Mary Colechurch*. Whereupon Mr. Serjeant *Corbet* moved to quash their Order, and likened it to the Case of *St. Olives, Old Jury*.

By the Court: The Words of the Act are *Binding and Inhabitancy*, and a Man is properly said to inhabit where he lodges; so that when a House stands in two Leets, the Owner is Resident in the Leet where he lies, and likened it to the Case above cited. If it had been set forth that he went on board to watch and do Service for his Master, and to take Care that the Goods in the Ship were not imbeziled, then by Chief Justice, he being in his Master's Service every Day, that would make a Settlement, and so it seemed to *Prat*, Justice. But in this Case it being only said, that he lodged aboard a Ship in another Parish, Order quashed.

Hilary, fourth of King George.

Anonymus.

Order of Removal being, that the Pauper may become chargeable, bad.

117. **A**N Order of Removal being in this Form, viz. Whereas Complaint hath

hath been made to us; that *Annie Stamp* is come into the Parish of *T.* and that she may become chargeable, &c. on Examination, &c. we do believe the same to be true, and that she was last legally settled at *W.* Quashed, for the Act enables Justices only to remove Persons *likely to become* chargeable, and not Persons that possibly may be chargeable, for no one can say who may not be chargeable.

Note; Exception was likewise taken to the Adjudication; but the Court took no Notice of that, the Order being naught for the other Exception.

Michaelmas, fourth of George.

The King against Marriot.

118. **T**O a Conviction for keeping a Greyhound, objected by Serjeant *Pengelly*, that the Defendant not being qualified, &c. kept a Greyhound, but does not say that he had not a hundred Pounds a Year, nor was the Son of an Esquire, as he ought to have done, according to *1 Saund.* 262. *West's Prec.* §. 129, 270, 248.

Exceptions to a Conviction on the Statute for keeping a Greyhound, for omitting the particular Qualifications.

Mr. *Reeve* urged, that this Conviction being on the fifth of *Anne*, pursues the Words of the Statute, for the particular Qua-

Qualifications are not there mentioned, and that the Cases cited are upon other Statutes, where express Qualifications are mentioned.

Mr. *Pengelly* replied, that the latter Statutes are Statutes of Reference to 23 *Car.* so that they must be considered together, and therefore it will be the same as to this, as if it were a Conviction on 23 *Car.* for where one Statute creates an Offence, and another gives the Penalty, both must be recited. *Plowd.* 206. *Cro. Eliz.* 750.

The Chief Justice inclined that the Conviction was good, notwithstanding this Exception, for the Statute is negative, and it lies on the Defendant to shew which of the Qualifications he comes under.

But another Exception was taken by Mr. Justice *Eyre*, viz. that the Evidence given is, that the Defendant is not qualified by Law, &c.

And we cannot intend that the Witness did swear these Words, that the Defendant being a Person not qualified, according to the Laws of the Land, to keep a Greyhound, did on such a Day keep, &c. for the want of Qualification depending upon particular Circumstances required by the Statute, they must be sworn, and the want of Qualification must be adjudged as the Consequence. *Prat* Justice: This is not right, if we suppose that those were the very Words

Words of the Evidence, but doubted whether this might not be taken for the Substance, and therefore should be understood to be the Collection of the Justices upon the Evidence before them.

The Chief Justice thought it a strong Objection, and said, that the Justices ought to have set forth the Sense of the Evidence before them, and not to make a bare Conclusion upon it of their own.

This Conviction was quashed by the whole Court, upon the Authority of the Case of the Queen and *Harward*.

Easter, twelfth of Queen Anne.

Parish of Willerton against Waddington.

119. **A**N Order for the Removal of a Certificate Person must be grounded upon a Complaint, that the Person is *actually* chargeable; the Adjudication must be, that he is chargeable, and for want of such Adjudication this Order was quashed.

Order quashed
for want of
the Words
that Pauper
is chargeable.

The

The same Term.

The King *against* Borne.

Overseers
having Mo-
ney in their
Hands are
compellable to
pay the same
over.

120. **I**T was moved to quash an Order of Sessions for the Defendant, who was ordered to pay twenty-seven Pounds in his Hands to the succeeding Overseers, six Years afterwards.

Objection; The Sessions have no Authority to take Account, but that is given by 43 *Eliz.* to two Justices. But not allowed; for by §. 6. an Appeal is given to the Sessions, and in so general Terms that an Appeal lies.

Then it was objected, that he should not, at this Distance of Time, be compelled to pay Money over, because the Inhabitants who were intitled to the Benefit of it may be altered.

And the Case of the Queen and the Inhabitants of *Ware* was cited, where an Order to reimburse Overseers sometime after the Expiration of their Office was quashed.

Because the Inhabitants may be changed, and so Persons charged who were not at first liable; for an Appeal is given, and no Time is limited for it.

But

But by the Chief Justice, if Overseers neglect to make a Rate to reimburse themselves, according to the Authority given them by Act of Parliament, for their Benefit, they shall not come a Year after, and have such a Rate, because the Inhabitants may be changed, and Persons come into the Parish who were not liable: But if an Overseer has Money in his Hands, he shall be forced to pay it over at any Time after; therefore the Order was confirmed.

Easter, fourth of King George.

The King *against* The Inhabitants of Ivinghoe in the County of Bucks.

121. **O**N a special Order of Sessions the Case appeared to be, that one *Nich. Young* being legally settled in the Parish of *Solesbury*, was at *Michaelmas* 1715, hired into the Parish of *Ivinghoe*; by *John Knight*, to serve him as a Shepherd till *Michaelmas* following; that he entered upon the Service and continued with *Knight* till *Lady-Day*, who then paid him Half a Year's Wages, and let the Farm to one *Smith*, who entered and took all the Stock and Servants, and in Harvest Time took *Young* off from keeping Sheep, and set him to

Servant hired for a Year serves his Master Half a Year, then serves another Master, who took the first Master's Farm the Remainder of the Year, gains a Settlement.

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Harvest Work, for which he paid him five Shillings extraordinary, and at the Year's End paid him the other Half Year's Wages: That *Knight*, when he left the Farm, never told *Young* he was no more his Servant, nor were there any Transactions between them towards Dissolving the Contract, nor did *Young* ever make any new Contract with *Smith* for the last Half Year; and the Justices adjudged the Settlement in *Ivinghoe*, where the Service was.

Mr. *Denton* moved to quash this Order, because to make a Settlement there must be both a Continuance of the Contract and Service, the 8 & 9 *W. 3. cap. 30.* requiring that the Party continue in the same Service for a Year; but here both the Contract and Service are broke off at the Half Year's End, and cited the Case of *Rudgwick* and *Dunsfold, Mich. 9 Anne*, where there was a Hiring and Service for a Quarter of a Year, then for Half a Year, and afterwards for another Half Year; all which was held to give no Settlement.

Mr. *Reeve* on the other Side insisted, that it being expressly stated, that there was no new Contract, the first must be taken to have a Continuance all the Year, and that if *Smith* had not paid *Young* the last Half Year's Wages, no Doubt (as this Case stands) but he might have come upon *Knight* for
 2 it;

it; that the five Shillings shews that he was *Knight's* Servant all along, for otherwise *Smith* had no Occasion to give him that extraordinary Pay. The Statute does not require an Identity of the Contract, for *Hill. 10 Will. 3.* Parish of *Overtown* against *Stevenson*, an Hiring and Service for Half a Year, and then a Hiring for a whole Year, and Service for Half a Year was held to give a Settlement. So *Easter*, the first of *King George*, the King against the Inhabitants of *Bridewell*, there was an Hiring and Service for three Weeks after *Mich. 1712*, to *Mich. 1713*, then an Hiring to the same Master, and a Service for eleven Months, and this adjudged to gain a good Settlement.

That by Statute 3 & 4 *W. & M. c. 11.* a *Binding* and *Inhabitancy* shall gain a Settlement; so that by the Words a Binding is required, and yet *Trinity 13 W. 3.* The King against the Inhabitants of *Eccles* in the County of *Norfolk*, it was held, that if the Master to whom the Binding was, assigns his Apprentice over to another, a bare *Inhabitancy* forty Days with the Assignee gives a Settlement; that in this Case there is a Hiring and Service for a Year in the Parish of *Twinghoe*, and that is sufficient.

That they did agree the Word *Same* was a Word of Relation, but that it would be satisfied by referring it to the same Place;

that those Statutes have always had a liberal Construction, as that Bearing Offices in a Parish amounts to Notice ; so the Statute says *any unmarried Person having no Child or Children*, and yet a Person, having a Child which was grown up and no Incumbrance to him, was held to be within the Statute, *Trinity*, the twelfth of *Queen Anne*, between the Parishes of *Silveston* against *Ashton* ; so *Easter*, the tenth of *Anne*, the Queen against Parish of *Aldenham*, and *Michaelmas*, first of *George*, *St. Saviour's Southwark*, Marriage within the Year was held to be no Hindrance of Settlement.

By *Prat*, Chief Justice, The Statute requires two Things, an Hiring and a Continuance in the same Service for a Year. There can be no Doubt but that in this Case there is a complete and perfect Hiring for a Year. But the Question turns upon the Service, Half of it was a Service to *Knight*, and the rest was in fact a Service to *Smith* ; but there being no new Contract with *Smith*, nor any Dissolution of the first Contract with *Knight*, it seems considerable, whether the whole shall not be taken to be a Service to *Knight* ; as if I lend my Servant to a Neighbour for a Week, or any longer Time, and he goes accordingly, and does such Work as my Neighbour sets him about, yet all this while he is in my

2

Service,

Service, and may be reasonably said to be doing my Business.

If the first Contract be not discharged, it must have a Continuance, and under it the Servant is intitled to demand his Wages of *Knight* his first Master, and the five Shillings given him by *Smith* is no Argument to the contrary, no more than if (in the Case I put before) my Neighbour had given my Servant a Gratuity for his extraordinary Trouble; what Agreement there was between *Knight* and *Smith* does not appear. But here is no Act done by the Servant that shews his Consent to change his Master, and therefore I take this to be a Service for the whole Year, pursuant to the first Contract, and consequently the Settlement is at *Ivinghoe* where the Service was; to which the three other Justices agreed, and the Order was confirmed.

Michaelmas fourth of King George.

Parish of *Mursly* against *Gainsborow*
Bucks.

122. **O**N Motion to quash an Order of No Person re-
Sessions of Removal, the Fact ^{moveable}
being specially stated in the Order, appeared ^{from his own}
to be thus. Estate.

K 3

That

That Sir J. Fortescue in 1687, demised a Cottage of thirty Shillings per *Annum* to one *Eden* for ninety-nine Years, reserving twelve Pence Rent, *Eden* assigns the Term to one *Gadden* in Trust for his Wife for Life, and then in Trust for his Son during the Remainder of the Term, the Son dies and leaves a Wife, who as Administratrix to her Husband became intitled to this Term, and she grants this Cottage for twenty-four Years, excepting two Rooms, after intermarries with *Chappel*.

Question was whether *Chappel* as Husband of an Administratrix, who was intitled to the Trust of a Term only, and being intitled to a Chattel in another's Right only, was removable by 13 & 14 of *Car. 2.*

Mr. *Denton* and Mr. *Darnel*, Serjeants, insisted that he was not removeable by the Intent of the Statute 13 & 14 *Car. 2.* and insisted likewise on the Authority of the Case between the Parishes of *Ryssip* and *Harrow*, 10 *W. 3.* wherein it was adjudged, that a Person seised of a Freehold, of ever so small a Value, could not be removed, and upon the Case of *Harrow* against *Edgeware*, *Easter 11 Anne*, where a Copyholder for Life, of a Cottage of twenty-five Shillings per *Annum*, was held to be irremoveable; and insisted, that to be settled, and to be irremoveable, are convertible Terms.

By

By the Court it was adjudged, that this Case was not within the Statute, (which impowers Justices to remove Persons coming to settle in a Tenement under ten Pounds *per Annum*) for that is to be understood of weak and conventional Renters, and not to prevent Persons from settling on their own Estates, but only to prevent Persons from removing from one Parish to another, for the Advantage of Commons, &c. and that no Person could be removed from his own, and that there was no Difference, as to this Point, between a Lease for Life or Years, and that the Value of the Estate that a Man had in his own Right, was not material, and that whether the Right devolved upon a Man by Descent, Purchase, or as Administrator, &c. it was the same, so that it was his own.

And they held that the Case of a Copyholder was a stronger Case, for that a Leasehold, in the Eye of the Law, is a greater Estate than a Copyhold, which is looked upon but as an Estate at Will; and in this Case, they looked upon the twelve Pence reserved to be only as an Acknowledgment, and therefore quashed the Order of Sessions for the Removal of *Chappel*.

Easter, fourth of George.

The King *against* Tipper.

Order to
maintain a
Pauper must
adjudge her
to be impo-
tent.

123. **O**bjection to an Order of Sessions on the Defendant, as Father in Law, to pay two Shillings and six Pence *per* Week, for the Relief of his Son's Wife, the Complaint is made that the Daughter is poor and unable to work, and that the Sessions do adjudge the Father of Ability, but do not adjudge the Daughter to be poor and unable to work.

Order quashed *nisi*; for the Sessions must adjudge the Party to be impotent before they can order Relief; and it was said by the Court, there is no Difference between this and the common Objection to Orders of Removal, that there is no Adjudication that the Person was likely to become chargeable, which has been always held to be fatal.

Trinity, third of George.

The King *against* The Inhabitants of Haughton.

Justices to ex-
amine Frauds
in Settle-
ments, for

124. **T**HERE was an Hiring and Service from *Ash Wednesday* to *Christmas*;

Christmas; at *Christmas* the Servant went home to his Father, (who lived in another Parish) took his Cloaths with him and staid a Week, then he returned, and was hired to and served the same Master for eleven Months, then he went home again for a Week, and returned and served the other eleven Months; and it was held that all this was done by Agreement of the Master and Servant to prevent a Settlement.

By the Court: It has had its Effect, we cannot interpose, but it is proper the Legislature should, the Statute expressly requires an Hiring and a Service for a Year, and therefore one Hiring and a Service for eleven Months, gives no Settlement. The Reason of hiring Servants at first for eleven Months only, is because the Servant may prove idle and good for nothing, and therefore the Master in Prudence avoids bringing a Charge upon the Parish, till he has had Experience of the Diligence and Fidelity of his Servant, and when he has had eleven Months Experience of his Diligence, &c. then if he hires him a second time, that is grounded upon his good Service during the former Hiring, but still this second Hiring must be as full as if the first Hiring was out of the Case; then the second Hiring would stand in the same Parity of Reason with a single Hiring and Service for eleven

eleven Months, which no body can say will gain a Settlement.

And no more can any subsequent Hiring of the same Nature.

If there was any Fraud, the Justices should have examined into it, for we cannot judge of the Fact, but the Law upon the Fact.

Hilary, fifth of King George.

The King against The Parish of West-woodhay.

Hiring from Thursday after Michaelmas to Michaelmas following, no Settlement.

125. **A**N Hiring from the Thursday after Michaelmas to Michaelmas following, was adjudged to give no Settlement upon the Authority of the Cases of *Frensham*, and *Pepperhawe*, and of *Haughton* and *Renton*; for by *Prat*, Chief Justice, there must be a strict Construction of the Statute, unless there be a Fraud, and that must come from the Justices below, for we cannot adjudge it, and therefore the Order adjudging such Hiring to give a Settlement, was quashed.

The

The same Term.

The King *against* The Inhabitants of
Waldershall, in the County of York.

126. **O**Rder of Sessions, that the Township of *W.* shall maintain the Poor according to the Direction of the 13 & 14 of *Car.* 2. was quashed; because there is no particular Direction to any body, but it leaves the Construction of the Act at large; and because the Sessions had no Jurisdiction to make such Order originally.

Original Order of Sessions that the Township shall maintain the Poor, Quashed.

The same Term.

The King *against* The Inhabitants of
Aldermanbury.

127. **I**T was objected to an Order of Sessions for the Settlement of *A.* that it was said that on Appeal, &c. without saying that the Appeal was made by Church-Wardens, &c. or by any Person aggrieved. After Consideration of this Objection, *Prat*, Chief Justice, upon the last Day of the Term, delivered the Opinion of the Court to be, that the Order was well enough, for that there was a strong Intendment that the Appeal was made by the

Objected to an Order of Sessions, that it was said, that on Appeal, without saying made by any Person aggrieved; and held good.

the Parties aggrieved, but declared that the Opinion of the Court was mostly governed by the Precedents, which were most of them in this Form, and therefore to avoid the Inconvenience of shaking many other Orders, this was adjudged good, and the Chief Justice declared that it was hard to distinguish this from the common Objections, to Orders of Settlements made on Complaint by Justices, without saying of Church-Wardens, &c.

The same Term,

Anonymus.

Order to remove a Man and his Family. Quash'd as to Family.

128. **O**bjected by Mr. Morly to an Order for the Removal of *Ross* and his Family from *Fawley* to *St. Mary Kalandar's*.

First, The Adjudication was, that *Ross* and his Family were likely to become chargeable, and that *Family* was too general. Quashed as to Family.

Secondly, The Adjudication is, that he was last legally settled as an Apprentice at *St. M. K.* without saying that he had lived there forty Days, which is requisite to give him a Settlement there as an Apprentice. But not allowed; for they need not be particular.

particular. The Court will intend that he has lived long enough there to make the Adjudication good.

Trinity, fourth of George.

The King *against* Arnold, &c. at Nisi Prius in Middlesex, before Prat, Chief Justice.

129. **I**ndictment against Defendants, for that they being Church-Wardens, and two others, Overseers of the Poor, duely appointed, did refuse to join with the others in making a Rate; and the Chief Justice held the Prosecutor to shew an Appointment by two Justices, as the Statute directs, and rejected Parol Evidence; because the Court must judge by the Instrument whether it be sufficient.

In an Indictment against Church-Wardens, for not joining to make a Rate, the Prosecutor must prove an Appointment, not by Parol Evidence.

The same Term.

Parish of Wittenham *against* Cookham Berks.

130. **A** Woman was by Order of two Justices removed from *Binfield* to *Cookham*, and *Cookham* made no Appeal against

Bastard Child born pending an illegal Removal, is settled with the Mother.

against the Order ; whereby it became conclusive to *Cookham*. She was afterwards removed from *Cookham* to *Wittenham*, and there dropt a Bastard Child ; and upon this Special Case it was adjudged by the Court of King's Bench, that the Settlement of the Child (the Mother being illegally removed from *Cookham* to *Wittenham*) was at *Cookham*, where the Mother was legally removed.

The same Term.

Parish of Stallingborow *against* Haxley, in the County of Lincoln.

Order quashed, being conditionally, and not positively.

131. **O**bjection by Mr. Serjeant *Hawkins* to an Order of Removal, *unless the Party shewed Cause to the contrary.*

First, That it was conditional, and not absolute, as it ought to be, such Orders being in Nature of a Judgment, and objected likewise that there could be no Appeal from such Orders.

Secondly, That there was no Adjudication, but only said, that we on Examination *do believe* the same to be true, and a Man may believe a Thing on uncertain Evidence ; but if it had been, that
it

it does appear to us, &c. it had been well enough.

By the Court both Exceptions were held fatal. The Order quashed.

The same Term.

**Parish of Great Kimble *against* Han-
slope, Bucks.**

132. **O**bjected to the Order of Removal, that the Examination was but by one Justice; whereas it ought to have been by both Justices, and for the Purpose, *Salk.* 489 was cited as a Case in Point, and therefore, though in another Case moved this Term, the Court inclined to think such Examination well enough, yet a Rule was made to shew Cause.

Exception to an Order of Removal, that the Examination was but by one Justice.

Michaelmas, sixth of George.

**Ivinghoe, Bucks, *against* Stonebridge,
Bedfordshire.**

133. **U**PON an Order of Sessions, the Case specially stated was, That *William Plowers* was bound an Apprentice to one *Emerton* a Taylor, then being a settled

A Certificate Man, by Purchase gaining a Settlement, intitles his Apprentice to the like.

settled Inhabitant of *Ivinghoe*, after some Time *Emerton* and his Family, with *Plowers*, removed to *Stonebridge*, *Emerton* having a Certificate from *Ivinghoe*, according to the Statute. In some short Time *Emerton* purchased a House in *Stonebridge*, and he with *Plowers*, his Apprentice, lived in the said House the last six Months before the Expiration of the Apprenticeship, which ended 1719.

Plowers married and died, leaving a Wife and Children, which by two Justices and Sessions were settled at *Ivinghoe*, on Account of his Apprenticeship there; and now these Orders being returned by *Certiorari*, Mr. *Denton* moved to quash them, and cited the Case of *Becklugh* and *Eastwoodbay*, in *Easter Term* in the fifth Year of King *George*, where the Court held, that a Certificate Man marrying a Woman, having forty Shillings *per Annum* Copyhold, and living upon it gained a Settlement by such Marriage, notwithstanding the Certificate.

And the Court made a Rule to shew Cause why it should not be quashed.

The same Term.

Parish of Ratcliff Tully.

AN Order to remove a Woman and her Children under seven Years to the Parish of *R. T.* her late Husband being hired there as a Servant for a year.

Court never
set aside an
Order on
Presumption;

The Exception was, that it did not appear upon the Order that the Woman was married since the Hiring, and if she was married before the Hiring, then a Service of such Hiring would not gain a Settlement. But by the Court, We will never send any Thing to set aside an Order, but presume every Thing in Favour of it to make it good.

The same Term.

Retton in the County of *Rutland*
against *Sommerly* in the County
of *Leicester*.

35. **T**WO Justices in *Lincolnshire* send a Pauper from *Witham*, in that County, to *Sommerly* in *Leicestershire*, Sessions

No *Certiorari*
to remove an
Order of Set-
tlement till
after an Ap-
peal.

*Hitchin, Oat-
ham and Sut-
ton, 93.*

*Petworth a-
gainst Ains-
mere.*

*Lothbury a-
gainst St. Pe-
ter's Hereford.
Harrow, Ry-
slip.*

*Salk. 492,
521.*

confirmed the first Order; in two Months after two Justices of *Leicestershire* send him to *Stretton* in *Rutland*, and this Order being removed, was held ill; because an Order of Confirmation is binding to all the World, as in *Salk. 472.*

Mr. Justice *Eyre* said, that my Lord *Holt* made a Rule that no *Certiorari* should be granted to remove an Order of Settlement till after an Appeal, and it would be well if observed.

The second Order by two Justices here was within two Months after the Confirmation, and so very improbable that a new Settlement should be granted. Second Order quashed.

Hilary, fifth of George the Second.

The King *against* Church-Wardens of
Hexam.

Adjudication
of the Child's
Settlement
necessary in an
Order.

136. **T**WO Justices make an Order on the Church-Wardens for the Maintenance of a Bastard Child, the Mother not being able to maintain it, and the Father not being known, and the Child likely to perish. Order the Church-Wardens to maintain it till the Mother shall be able to provide for it. Did not appear on

Oath that the Child was born in the Parish, neither was there any Adjudication in the Order.

A Rule was granted to shew Cause why Order should not be quashed, which was afterwards made absolute.

The same Term.

The King *against* Horwell.

137. **M**R. Reeve moved to quash a *Certiorari* granted to remove some Order of Sessions relating to the Repair of the Highways, for the following Act of Parliament, 3 & 4 W. & M. cap. 12. *page 23.* restrains bringing a *Certiorari*, and a Rule granted to shew Cause.

Certiorari
does not lie to
remove Or-
ders relating
to Highways.

The same Term.

Parish of Epingham *against* Wisbich,
Ely Isle.

138. **R**emoval on 16th of *June*, and on third of *July* removed without Appeal, and a Rule was granted by the Court of King's Bench, to shew Cause why the Order should not be quashed.

Orders of Re-
moval only
relievable
upon Appeal.

The same Term.

The King *against* Giles, for an Assault.

Exception to an Indictment, that the Jury instead of being charged were discharged.

Jurati & exonerati.

139. **M**Oved to quash an Indictment on an Exception, that the Jury instead of being charged are discharged, for it set forth that *being sworn and discharged*, but there being another Indictment under the same Caption, on the same Parchment, over-ruled. But not being said *sworn, &c. then and there*. Shew Cause.

The same Term.

The King *against* Johnson and others.

Mandamus granted to take Surveyor's Accounts, and to reimburse them.

140. **A** *Mandamus* was granted to the Defendants to take the Accounts of a Surveyor of the Highways, and to allow him a Rate for reimbursing him the Money he had been out of Pocket.

The

The same Term.

The King *against* The Inhabitants of
St. Martin's Ludgate.

141. **T**WO Justices remove *E. L.* single Woman, from *Westminster* to *St. M. L.* as likely to become chargeable, for that her Father had rented a Tenement in the Rules of the *Fleet*, of *above ten Pounds a Year* Rent, and that the Daughter now removed was born there; *this is a Settlement within the Statute Car. 2.* and Sessions quashed the Order of two Justices, and now the Order of Sessions quashed.

Renting a Tenement of ten Pounds] *per Annum*, though in the Rules of the *Fleet* gives a Settlement.

The same Term.

The King *against* Banghurst.

142. **T**HE Defendant was committed by a Justice of Peace, being charged with getting a Woman with Child, which, when born, would be a Bastard; and now being brought up by *Habeas Corpus*, it was moved to discharge him; because by the Statute 18 *Eliz.* the Justices have no Authority to commit until the Child be born, for perhaps it may never

Commitment in Bastardy discharged, not being said to be on the Oath of the Woman.

be born, and the Father may keep it after it be born, and mentioned Cases at *Nisi Prius* brought against Justices and Church-Wardens, as the Case of *Wenman* and others; but *Page* and *Probyn* only Justices in Court, would not determine it upon the Exception. But the Commitment was discharged; because the Defendant was not said to be *charged upon Oath of the Woman*, and the Defendant was discharged.

The same Term.

The King against The Inhabitants of Utoxeter.

J. L. shortly reported 2. Ann. 932.

Certiorari lies not to remove a Poor's Rate, with every thing concerning it.

143. **A** Rule was made to shew Cause why a *Certiorari* should not be granted, to remove an Order made relating to the Poor's Rate, *with every thing concerning it, and also the Rate itself*. But it was objected by Mr. Reeve, that the *Certiorari* did not lie. *Salk.* 526. The King against the Inhabitants of *Audley*. *Salk.* 483. *Shoreditch*, *St. Leonard's*, The King against the Inhabitants of *Wincanton*, *Michaelmas*, 13 George 1. The King against *Eggleshall*. The King against the Inhabitants of *St. Mary Marlborough*, *Certiorari* to remove a Rate, and the Return filed. *Hil. 9 Anne.*

The

The same Term.

The King *against* Utoxeter.

THE Question was, Whether a *Certiorari* }
Certiorari should go to remove does not lie
 a Poor's Rate, the Orders being removed, to remove a
 and on shewing Cause, it was said, Poor's Rate.
 that no such *Certiorari* had been granted
 for twenty Years last, 2 *Salk.* 483. *Carth.*
 464. The King *against* the Inhabitants of
St. Dorchester, Mich. 7 George 1. The King
against the Inhabitants of *Bridgewater,*
Hil. 7 George 1. The King *against* the
 Inhabitants of *Barnstaple, Hil. 3 George 2.*
 The King *against* the Inhabitants of *Win-*
canton. The Sessions are Judges of the
 Equality, and upon the Appeal it is never
 made a Record of the Sessions, and Notice
 is given to the Church-Wardens to pro-
 duce the Rate, and after the Determina-
 tion by the Sessions, the Rate is returned
 to the Officer.

The same Term.

The King *against* Utoxeter.

Certiorari
does not lie
to remove a
Poor's Rate.

MR. Serjeant *Birch* for the Rule. If it should appear not to be a legal Rate, it may be returned here though not filed, for after the Confirmation this Court has an Authority, and as to Poor's being starving, that is not the Case now, for Rates should be Monthly. Mr. *Fazakerly*: The Rate which is confirmed is become Part of the Order, and ought to be returned; as to the Inconveniences, the Order is the same as if the whole was returned; for pending that, the Rate cannot be collected, and since there may be Error in this Part it ought to be looked into; for a Rate ought to be confirmed by two Justices (*Quorum unus*) which must appear; it is admitted there are two Instances where Rates have been removed hither by *Certiorari*. Suppose a Person rated for Stock upon his Land, which by Law he is not liable to, ought it not to be returned into this Court to see whether it is so or not? it was offered to be tried in a feigned Issue; for the Case

is, that within the Parish of *U.* are three Vills, *U.* insists they are to maintain their own Poor. As to the giving back the Rate to the Officer, that is wrong, for on Appeal the Sessions ought to make it Part of the Record, and not to intrust the Officer with it; the Justices are barely Judges of the Fact. Suppose it appeared the Rate was made to reimburse former Overseers, cannot this Court quash it?

Mr. *Wyrly*: The general Reason for not removing a Rate is, that the Poor are starving, but that is not the Case; at the Sessions they entered into the Question between the Town and the Vills, and determined that the Vills jointly should maintain their Poor distinct, and for that Reason quashed the Rate, *Salk.* 483, 826.

Mr. Justice *Lee*: The Order is, that the Rate, as to these three Vills, should be quashed; because they are to maintain their own Poor: An Appeal from a Rate is improper, for it is the Person is aggrieved: The Matter for the Consideration of the Sessions is the Fact on the Assessment; they are not to meddle with the Form of it; and nothing they can do will help it as to Form; but the Assessment is only Evidence, and no Part of the Record, and that remains in the Hands of the Officers.

Mr.

Mr. Justice *Page* thought the Rate itself ought to be returned into this Court, for the Judges to consider it; the Assessment is joint and cannot be distinguished.

Chief Justice: By the Order it does not appear what the Rate is, and it is not possible for this Court to judge whether it is right or wrong: I should think, when a *Certiorari* goes to return Orders with all Things touching the same, that every thing should be returned for us to judge on; I do not mean the Fact, for that we cannot do, but the Thing itself in Question. Then was cited the King against *Eggleshall*, Mich. 13 George 1. where the Examination was returned, that the Court might look into it, but the Chief Justice said, that was a bare Fact. The King against the Inhabitants of *St. Mary Marlborough*, Hil. 9. Anne, a Rate was returned and *Certiorari* filed; but it was said that was done without Enquiry, and before the Rule for Motions to be made in open Court for all *Certioraries*.

Mr. Justice *Probyn*: The Rate may be void at first Sight, and if it be, how can the Court judge whether it be so or not, without the Rate itself be returned hither? The King against the Inhabitants of *Marlborough*, 9th of Queen Anne, upon Search, that Rule for a *Certiorari* was afterwards discharged,

discharged; and Mr. Justice *Lee* said it was discharged upon the great Inconvenience that would attend such Removals, and not upon any Variance, and the Rule to shew Cause why a *Certiorari* should not be granted to remove the Rate was now discharged, and said it was objected in the Case of *Marlborough*, that it being a Corporation the Party could have no Benefit of the Appeal, the Justices being the same; but it was answered that Advantage might be had on the Distress.

Hilary, ninth of Queen Anne.

Inhabitants of Horley against Charlton.

144. **O**RDER of Justices to remove a Woman being an Apprentice avoids the Indenture by Marriage.
 Woman from *H.* to *C.* and *C.* appeals, and Order of two Justices quashed by the Sessions, upon the Appeal, and the Case stated specially by the Sessions, that one made a Will 8th of *February* 1705, and gave to *H.* thirty Pounds for putting out Charity Children, by the Consent and Choice of her Executors and the Church-Wardens of *H.* and that *A. B.* the Person removed was bound to *J. C.* of *C.* for six Years, as Apprentice, with the Money left, and

and that she lived six Months after the Binding at C. but that neither the Testatrix nor her Executors were Parties to the Binding; and the Sessions were of Opinion, that she got a Settlement by this Residence of six Months at C. The Statute 43 *Eliz.* describes how the Binding shall be, which is in the Nature of the Execution of a Power which is to be done strictly, 8 & 9 *W. 3. c. 30.* Persons to whom Apprentice is bound shall receive and provide for them according to the Indenture; it is not an Enlargement of 43 *Eliz.* but in this Respect, that he shall be bound to receive and provide according to the Indenture. It would have been necessary to shew the Master did execute the Part of the Indenture, and if he did not, it is not a Binding to make that an Apprenticeship; and if it is to be taken at Common Law, the Church-Wardens and Overseers, with the Consent of two Justices, have put her out, and it amounts to no more than an Agreement or Covenant she should serve the Master, *Salk. 479*, that was held not a Settlement, but a bare Boarder; an Infant might bind himself. *Hil. 3 George 1. Newbury against St. Mary's Reading*, so as to make a Settlement, though not to make him (3 & 4 *W. & M.*) liable to the Covenants in the Indenture. 43 *Eliz.* Man bound till twenty-four, and a Woman till twenty-one,

or marrying, then the Binding ought to be according to the Direction of the Statute ; but this is a general Binding, but here the Age of the Woman does not appear, and she might be above the Age of twenty-one, and then it is void by that Statute. 7 *Jac.* 1. c. 3. made about binding Apprentices in Towns not corporate, there the Vicar, &c. there Money is given for placing out Children ; now this Woman was bound by special Money left by a particular Person, but here neither the Minister nor Constable were Parties to the Binding, and the Statute *Jac.* 1. exempts Cases out of 43 *Eliz.*

Mr. *Fazakerly* : The Charity appoints the Bindings shall be by Consent of her Executors and the Church-Wardens ; but this does not appear upon the Order ; then the 43 *Eliz.* Orders a Raising a Fund for putting out Apprentices with the Consent of two Justices (*Quorum unus*) ; that is not said here ; then she is bound for six Years, and if those on this Binding extend beyond twenty-one, then it is void ; and if the six Years coincide with the twenty-one, yet it is void ; because if she married before, she ought to be discharged ; by 7 *Jac.* 1. c. 3. the Minister of the Parish is to be a Party, but he is not a Party to the Binding, and as that Statute is not pursued, the Binding does not gain a Settlement, and it would be

be hard to bind her to live in a particular Place where she had no liking to live ; no Apprentice without Deed, *Cartb. 94.* A Town cannot put one Apprentice but those they provide for, this was not such a one ; and if they should, the Statute 7 *Jac.* would be totally eluded ; and it may be a Question, whether under the 5 *Eliz.* the Binding shall be but for seven Years.

Contra ; Objection, this is not pursuant to the Will ; because it does not appear it was with the Consent of the Church-Wardens, and her Executors, which was requisite, though she does not say they shall be Parties ; but if this should be the Case, it amounts only to a Misapplication of the Trust Money, but the Binding shall be good, and it is not said they disapproved or were not consulted.

As to the Objection 7 *Jac. c. 3.* the Objection is, the Minister and Constable are not Parties, but there is an Exception in the Statute, of Money given otherwise by the Donor ; but upon the Order the Statute seems to be pursued, the major Part named make it good, which is given by the Statute, for they are only two out of six ; the Law takes Notice of a Consent as to a Settlement, but looked upon all Places, as to the Party, to be equal, whether settled

ted in one Place or other, nor is their Consent requisite.

The Order states, that *Martha Danvers* did not execute the Indenture, but that extends only to the Places where Custom has obtained for Infants to sign the Indenture as in *London*.

As to the Objection on the 43 *Eliz.* the Indenture mentions they were bound by two Justices (*Quorum unus*) and that the Age of *M. D.* appears, but the Order of Sessions has stated it differently as to a Marriage, the Indenture will be avoided by it, she is then under the Power of her Husband, and the Apprenticeship would be void.
1 *Jac.* 1. c. 25. Adjourned.

The same Term.

The King *against* Askman.

145. **I**ndictment by way of *quod cum* laid of a Rescous (being by Recital, *that* *whereas* was therefore quashed. Indictment by way of Recital, bad.

The same Term.

The King *against* Wing.

146. **I**nformation granted against the Defendant, Mayor of *Wallingford*, for Extor- Information against a Mayor for Extortion, in

taking more
than his due
for four War-
rants.

Extortion, in taking fourteen Shillings for four Warrants to impress two Teams to carry Soldiers Baggage. No Fee allowed by the Act to prevent Mutiny and Desertion. Mr. Justice *Page* said, that only six Pence was due for a general Warrant, and twelve Pence for a special Warrant; he put the Constable in a way of reimbursing himself, bidding him put it in his Rate, and he would allow it; this was put in the Constable's Rate, and taxed on the County.

The same Term.

The King *against* Morris.

Motion for a
Certiorari to
remove an In-
dictment from
Grand Ses-
sions in *Wales*.

147. **M**OVED for a *Certiorari* to re-
move an Indictment from the
Grand Sessions in *Wales*, for a Nufance
in erecting a Ware, and cited *Popham* 144,
and that such *Certiorari* had been granted
to Counties Palatine. 1 *Salk.* 43.

The same Term.

The King *against* Orm.

Information
against a Col-
lector of the

148. **T**HE Collectors of *Ashby de la*
Zouch in *Leicestershire*, pre-
tended

ended they had a Right to collect Money Land Tax,
due for the Land Tax more than was as- for collecting
sessed, because it had been a Custom in that more than
Town for twenty Years, to collect Money due.
more than in the Duplicate, and divide the
Surplus among themselves, *Salk.* 382.
though insisted the Land-Tax Act had gi-
ven Remedy before the Commissioners, and
that an Indictment would quiet the Coun-
try as well; but it was said, that the Chief
Baron at the Assizes had recommended an
Information; and Rule for Information
made absolute.

The same Term.

**The King *against* The Inhabitants of
Newton.**

149. **O**N shewing Cause why an Order Certificate
of Removal of two Justices Man adjudged
should not be quashed, for removing a Cer- to be actually
tificate Man, which Certificate was not chargeable,
said to be allowed by two Justices; it was a good Order.
insisted, that the Justices have adjudged N.
to be their last legal Settlement, which was
sufficient, and that the Certificate shall be
presumed a good one, as in the Case of
Wages intended in Husbandry.

It was answered in the Case of *Horn-
castle against Boston*, *Easter* 4 G. 1. where

two Justices were Witnesses to a Certificate, and the Court held it no good Certificate, for Justices ought to allow, and being only Witnesses was not a Mark of their Approbation.

Mr. Justice *Probyn*: The Order is good, for it sets out that the Pauper came by Certificate, and adjudge he was actually chargeable, and that *Newton* was the Place of his last legal Settlement, they having gained no Settlement elsewhere since; which sets out the whole Reason of their Judgment, and would make the Settlement good if there had been no Certificate; therefore the Order of Removal must be confirmed.

Easter, fifth of King *George* the Second.

The King *against* The Inhabitants of the Borough of Wallingford.

Motion to quash *Mandamus* to allow a Rate to reimburse Surveyors of the Highway, denied.

150. **M**R. *Taylor* moved to quash a Writ of *Mandamus* directed to the Justices to sign a Rate made for reimbursing the Surveyor of the Highways, for extraordinary Charges, &c. this Power of the Surveyor of the Highways arises from the 3 & 4 *W.* and the Writ is too general; this

this arises upon the particular Statute; the Power of the Justices is circumscribed.

But by the Court, you may return the Writ, we do not supersede a Writ because erroneous, unless you shew some palpable Fault upon the Face of it; and Mr. Justice *Lee* said, he remembered it denied in the Case of the Insurance Company.

Take nothing by your Motion.

Easter, fifth of *George* the Second.

The King against The Inhabitants of
Utoxeter.

151. **M**R. Serjeant *Birch* took Exceptions to the Order of Sessions, made at *Stafford*, that three Villis should pay the Poor within those Villis, and that *Utoxeter* should pay its own Poor within the Parish, exclusive of those Villis.

Exceptions taken to Order of Sessions, that three Villis should pay their Poor, and *Utoxeter* its own Poor, exclusive of those Villis.

First Exception, That *Stafford* is not a County within the Meaning of 13 & 14 *Car.* 2. which extends only to the northern Counties, and cited 2 *Lev.* 142. 3 *Keb.* 422, 539.

Second Exception, That the Order is too general, for it ought to say, that this Parish is so large that it can come within the Benefit of the 43 *Eliz.*

M 2

Third

Sessions Cases adjudged in the

Third Exception, That the Appeal of the three Vills is joint, which ought to have been separate, and the Vills in this Respect to be considered as Parishes.

Fourth Exception, The Order that these Vills should maintain their own Poor is also wrong, being joint, for by the Statute every Vill must maintain their own Poor, and cited *Salk.* 480. where it is held, that the Sessions cannot annex one Parish to another.

Mr. *Wyrly*: This being an Appeal from a Rate, the Sessions had no Power to consider any thing else, and could not bring this Matter in Question, for the Equality, or Inequality of the Rate was what was before them, and they could not settle the Bounds of those Vills.

To which it was replied, that it was determined in *Dolting* and *Stoke-Lane*, *Salk.* 486. in the Margin, that the Statute 13 & 14 *Car.* 2. extends to all Counties.

Mr. *Reeve* said, by 43 *Eliz.* Justices have a Jurisdiction on Appeal for Poor's Rate, and here the Appeal is by the Inhabitants of the three Vills, and the Sessions quash the Rate as to these three Vills; as to that ordering Part, that they should maintain their own Poor separately from *Utoxeter*, it was a Matter not before them, for only the three Vills appealed.

As

As to *Stillington* and *Norton*, that has been determined otherwise since, in *Dolting* and *Stoke-Lane*, *Hil. 11. Anne*, where it was resolved that the Statute *Car. 2.* would extend to other Counties than those named in the Statute, as to *Brucum-Lodge*, it did not appear that there was more than one House, and as to a single House the Court was of Opinion, that Justices could not appoint Officers; which was the Reason they did not determine the Settlement.

Mr. *Abney* on the same Side insisted on the Case of the Queen against the Inhabitants of *Dolting*, *Stoke-Lane* and *Brucum-Lodge*; and so was the King against the Inhabitants of *Rufford*, where a *Mandamus* was granted to appoint Overseers.

As to Exception that the Order is too general, it is sufficient.

As to third, That Appeal being joint is wrong, though every Man may have a separate Rate, yet they may join; because the Words of 43 *Eliz.* are *Party and Parties aggrieved*.

Mr. Serjeant *Birch*, in Support of Exception, the Case of *Dolting* stands alone, and nothing determin'd as to Parishes. As to the second Exception, it ought to appear they are right.

In a common Order of Removal it is necessary to shew it was upon Complaint,

that the Justices *Quorum unus*, that the Party was likely to become chargeable and removeable, and must adjudge the Place of his last legal Settlement; in the present Case the Largeness of the Parish is the only Point of Jurisdiction.

As to their Paying separately from *Utoxeter*, it ought to have been shewn, that those Vills had Overseers, a Case in *Salk.* that Justices cannot annex and consolidate Parishes.

Mr. *Fazakerly*: It is now contended, that the Statute *Car. 2.* extends to all Parishes in *England*, which if it should prevail would make great Confusion, and alter the present Method by dividing every Parish that has Vills; that the Statute is not general appears by the Words, *many other Counties*; the Case of *Dolting*, &c. are no Authorities; because the present Case relates to Vills within Parishes, and the other are that the Statute extends to Places that are not within Parishes.

They had no Jurisdiction to make this Rate jointly, and that was not a Matter proper for an Appeal, but should have stood a Distress; Officers of one Parish might as well have rated the next, for Inequality, &c. are proper only for Justices Inquiry, and they ought not to quash Orders where the Parties had no Right of Appeal.

Order

Order only says, for such Vills Overseers were duly appointed, but does not say how long, perhaps but a few Days before.

Mr. *Wyrly*: As at Common Law no Provision was for the Poor, so all the Statutes made for that Purpose are taken as penal, and as laying a new Tax or Burthen on the Estates, and upon that Consideration was the Resolution in *Stillington* and *Norton*; so the Exception that the Statute *Car. 2.* does not extend to the County of *Stafford*, goes on this Reason, That inferior Jurisdictions ought to set out their Power; neither can they determine a Right which will affect the Parishes for ever, as that of the Boundaries.

Chief Justice: It is a Case of considerable Consequence, and we must have Copies of the Orders; the Reason of *Mandamus's* to appoint Overseers in extraparochial Places was, that the Poor in such Places should not starve: If a Parish is such a one, as by Reason of the Largeness the Poor cannot be so conveniently maintained, then it comes within the Intent of the Statute, and whether this Point ought not to be set out.

Mr. Justice *Page*: Where Vills are thus separated, it might bring ten Shillings in the Pound on one Vill, that happened to have most poor; it seems to put too great a Power in Justices. Adjourned.

The same Term.

The King *against* The Inhabitants of
Welfborn and Walton.

Information
not granted
against a Pa-
rish for not
repairing the
Highways,
the Grand
Jury refusing
the Bill.

152. **M**OVED for an Information a-
gainst the Inhabitants of these
Parishes, for not repairing their Highways,
upon an Affidavit that the Road was ex-
tremely ruinous, and that they had ap-
plied to the Grand Jury at the Assizes, but
could not get the Bill found, and said in
the Case of the King and the Parish of
Loughborough in Leicestershire, about seven
Years ago, Information was granted. Shew
Cause.

The same Term.

The King *against* Bowden,

Order for
Payment of
small Tithes,
quashed, be-
cause it did
not appear
they had been
demanded.

153. **M**R. *Pilsworth* moved to quash an
Order made for the Payment of
small Tithes according to the Act of 7 & 8
W. 3. c. 6. which had been subtracted.

The Exception taken was, that it did
not appear by the Order, that the Tithes
had been demanded, and that twenty Days
were

were elapsed without paying of them; and until that, the Justices by the Act have no Jurisdiction.

Mr. *Reeve*, to shew Cause why the Order should not be quashed said, That by the Act of *W.* an Appeal lies to the Sessions, and no *Certiorari* shall go.

Mr. *Pilsworth* to that said, That the Act takes Notice of the *Rights* coming in Question; that he had an Affidavit, whereby it appears, that the Right of the Land is in Question, but that could not appear on the Orders, nor was it necessary, so that an Affidavit is the only Method we have to make this appear to the Court.

Mr. *Reeve* said further, That the Court could not intend there was no Demand.

Mr. *Pilsworth*: That must be expressly adjudged, which is not done.

Justices *Page* and *Probyn* absent.

Chief Justice and Mr. Justice *Lee* said, that this being a limited Jurisdiction it should appear to be pursued, and thought the Order bad in that particular. Order quash'd.

The

The same Term.

The King *against* The Inhabitants of
North Featherton.

The first Order of Removal not being appealed against, is conclusive.

154. **T**HAT on such a Day two Justices made an Order, by which they removed a Man, his Wife and four Children, naming them, and adjudge their Settlement; no Appeal to the next Sessions, and that Order is affirmed.

Afterwards two Justices make an Order, whereby they remove the Woman by her Maiden Name, and the four Children as Bastards. Appeal to the Sessions, the Sessions upon hearing the Matter stated it specially, and amongst others state, *that this Woman and the four Children were the same* with the Woman and Children removed by the first Order confirm'd as aforesaid, and delivered it as their Opinion, That the first Order being confirmed was conclusive, and thereupon quashed the said Order of two Justices; and Mr. Fortescue, the first Order of two Justices being confirmed is conclusive, and therefore the second Order of two Justices is totally irregular, and the Sessions did right in quashing the second Order of two Justices; the first Order confirmed

firmed was conclusive, and prayed that the last Order of Sessions might be affirmed, as well as the first Order of Sessions confirming the first Order of two Justices.

Mr. *Reeve* agreed to the general Rule laid down, but said this Case was quite different; it appears plainly, by the Order of Sessions, that the Merits of the Case is with the Parish of *Featherton*, for the Children are Bastards born at *Horfington*, and there the Mother was likewise settled: The first Order of two Justices is for removing the Man and his Wife and their four Children, this Order is confirmed: By the second Order of two Justices *Mary Holker* and her four Bastard Children are removed; therefore at first Sight they are not the same: But indeed the last Order of Sessions does find them the same Persons; the last Order of Sessions states, That this Woman was not the Wife of the Husband, for he, though married, was married before to another Person, and of Consequence the second Marriage totally void; they are removed by wrong Names or Descriptions, and suppose the Case of a Mistake in the Christian Name of the Party removed, shall that be conclusive? he said it was a new Case, and submitted it to the Court.

Chief

Sessions Cases adjudged in the

Chief Justice thought they had slipt their Opportunity, and that the first Order confirmed is conclusive.

Mr. Justice *Page* agreed.

Mr. Justice *Probyn*: 'Tis conclusive, that is the Time prescribed by Law, and not appealing, that Order is confirm'd, and is conclusive.

Exception to the first Order of two Justices, That the Age of the Children did not appear; *Answ.* That it was adjudg'd to be the Place of their legal Settlement, which is sufficient.

Mr. *Reeve*: It does not appear what Officers made the Complaint, all the Officers of both Parishes are named, *viz.* Upon Complaint by the said Officers.

Chief Justice: We will suppose all the Officers made Complaint.

The Court affirmed the last Order of Sessions, and the first Order of two Justices,

The same Term.

The King *against* Holland.

Exception to an Order of Bastardy, that it did not appear that Defendant was before the Justice, over-ruled.

155. **O**RDER of Bastardy made by the Justices of *Worcester*.

Mr. *Parker* took two Exceptions, one to the Caption, *viz.* *Worcestershire*, to wit,
At

At the General Quarter-Sessions of the Peace held at *Worcester* for the County aforesaid; the Exception to this was, That it did not appear the Sessions were held within the County. The second Exception, That it did not appear that the Defendant appeared, or was heard before the Justices, and said that the Court did not intend any thing.

Mr. *Reeve* on the other side said, That as to the first Exception, there was nothing at all in it; that every one knew, and the Court would take Notice that in several Counties the Sessions are actually held within Cities, which are Counties of themselves, and that by Act of Parliament; and such is the Case of *Worcester* for the County Justices to hold their Sessions there; as to the other Exception, he said, that had been formerly allowed; but in the late Cases it has been held otherwise, *Easter 11 Anne, Queen and Cripps*, and *Mich. 4 George 1. King and Blackwell*, in both which Cases this Exception was taken and over-ruled. The Court confirmed the Order.

Mr. Justice *Page*: If Summons necessary, the Appearance of the Party does not cure the want of it, and so held in Serjeant *Whitacre's* Case.

The

The same Term.

The King *against* The Inhabitants of
South Cerney.

Pauper hired
the *Wednesday*
after *Michael-*
mas, to serve
to *Michaelmas*
following, no
Settlement.

156. ORDER of two Justices for removing a poor Person from South Cerney to *Coltsbourn* in *Gloucestershire*; on Appeal the Sessions discharge that Order, and state the Case specially.

That at *North Leach* are annually held two Mops or Meetings for the hiring of Servants, the one on the *Wednesday* before *Michaelmas*, the other on the *Wednesday* after; that the Pauper was hired the *Wednesday* after *Michaelmas*, to the Parish of *Coltsbourn*, to serve to the *Michaelmas* following, which he did accordingly, and received his Wages.

Mr. *Stevens* moved to set aside the Order of Sessions, because upon the Case specially stated, a sufficient Settlement appeared, the Person being hired according to the Course and Custom of the Country, at the usual Times for hiring Servants for the Year following; said he only contended for it on the Custom of the Country; but it was ruled by the Court, that *this is no Settlement upon the Face of it, there must be a*

Hiring for a Year, and that cannot be dispensed with, and refused even a Rule to shew Cause.

Michaelmas, sixth of George the Second.

The King *against* The Commissioners of Sewers in Nottinghamshire.

157. **E**Xceptions were taken to several Orders of the Commissioners of Sewers. Exceptions made to an Order of Commissioners of Sewers.

First was, That it did not appear that three of the Commissioners were of the *Quorum*, which by the Statute 23 H. 8. they ought to be.

Secondly, That it does not appear that the Place upon which the Orders were made were within their Jurisdiction.

Another Exception was likewise taken to the last of the Orders: That the Commissioners had made an Order, that all Constables should pay two Shillings to their Clerks for a Copy of every Order; that though the Act allows them to make a reasonable Allowance to their Clerks, yet they would not make such an Order on the Constables but in the Towns; and a Rule was made to shew Cause, which was afterwards made absolute.

The

The same Term.

The King against Roberts.

Conviction confirmed on the Statute of Queen Anne, for making Party-Walls to prevent the Spreading of Fire.

158. **C**ONVICTION upon two Acts made in Queen Anne's Reign, to prevent Spreading of Fire; to make Party-Walls; Penalty on the Proprietor, and also on the Builder, of *fifty Pounds each*.

Exception; Justices have not set forth sufficient Authority to ground their Conviction upon; Justices of Peace of the County of *Middlesex* have not all of them a Jurisdiction, for the Offence is confined to the Bills of Mortality.

Second Exception; The Statute excepts *London Bridge*.

These are summary Convictions, the Court will not assist, it does not appear that these are Party-Walls intended by the Act, there may be Party-Walls in the midst of the Houses severally, and not between House and House, and then not within the Act.

Third Exception; That it is set out that all the Party-Walls were not totally built of Brick. 7 Anne excepts Door-Cases, &c. and then it is not totally, which may answer the Act.

Chief Justice: I do not think the Door-Cases any Part of the Wall.

By the Court all the Exceptions over-ruled,
and Conviction confirmed.

Michaelmas, sixth of George the Second.

The King against Hall.

159. **A**N Information was moved for a- Information
gainst *Hall* for a very gross Per- granted for
jury which appeared upon the Certificate of Perjury.
Judge *Page*. Shew Cause.

The same Term.

*The King against Church-Wardens of
Brackley, St. Peter's.*

160. **T**HE Sessions made an Order upon Sessions can-
former Overseers, to pay Money not proceed
to subsequent Church-Wardens in the first in the first In-
Instance. stance, where
an Appeal is
given.

Objected, that Sessions cannot proceed
in any Case in the first Instance, where an
Appeal is given by Statute, but only where
Power is given to the Justices and no Ap-
peal; and so held *Salk.* 471, and a Rule
was made to shew Cause.

The same Term.

The King *against* Killingsworth.

Exceptions to
an Indictment
for Words
spoken of a
Justice of the
Peace, and
the Judgment
reversed.

161. **I**ndictment for speaking Words a-
gainst a Justice of the Peace; Judg-
ment by Default; Error brought.

First Exception; The Words *then* and
there omitted in the Indictment.

Second; Judgment in *English*.

Third; 'Twas that he should stand com-
mitted to the County Gaol without men-
tioning any Time.

Nobody of the other side; Judgment re-
versed.

Note; Defendant was committed on the
Judgment by Default.

The same Term.

The King *against* Longhoughton.

Exceptions to
an Indictment
for not repair-
ing the High-
way.
Quashed.

162. **I**ndictment against the Inhabitants
of a Vill for not repairing their High-
ways; Demurrer to the Indictment.

Exception to the Caption of the Indict-
ment, the Words *then* and *there* omitted;
King and Morice, *Trin.* 4 George 2. the same

Ex-

Exception allowed, and in the King and *Killingworth* this was held fatal, and Indictment quashed.

There was another Exception intended, that the Vill was indicted generally without shewing that by Custom or Prescription they were liable, and of common Right a Vill is not liable; this Exception was allowed in the Case of the King and Inhabitants of *Talk-Stafford*, taken by Mr. Parker this Term. Indictment quashed.

The same Term.

The King against The Inhabitants of Eccleston.

163. **A** Rule had been made to shew Cause why a *Certiorari* should not go to remove a Rate made upon the Parish of *Eccleston*, to contribute towards the Repairs of the Roads of the Vill of *Slin-*
don, within that Parish.

Mr. *Lacey* to shew Cause said, That this Order was founded on the 3 & 4 *W.* by which it is expressly directed, that no *Certiorari* should lie.

Mr. *Parker* on the other side said it was founded on the 7 & 8 *W.* which is silent in this Matter, and said where a subsequent

A Certiorari nisi to remove a Rate on a Parish, to contribute to the Repairs of the Roads of a Vill within the same Parish.

Law was made, and an Act done in Pursuance of it, that a former Law would not influence it, and mentioned the Case of a popular Action on the Statute *Jac.* which does not affect any Method of proceeding in any popular Action grounded on a latter Act, but desired the Rule might be enlarged for a Day or too to look into it.

The same Term.

The King *against* Hatchley Tradgely and others.

No View on an Indictment at the Assizes, till removed into the King's Bench.

164. **M**R. *Fazakerly* moved for a *Certiorari* to remove an Indictment found at *Salop* Assizes, for stopping a Water-course, and said the Reason was why they desired to remove it, because the Defendant would be under a Necessity to have a View in Order to make his Defence, and that without Consent of the Prosecutors they could not have a View on any Indictment found at the Assizes; but when the Indictment was in this Court they should then be intitled on the Act of Parliament in Course.

The Court said that it did not appear but that the Prosecutor would consent, and that he should have had an Affidavit of an Application

Application to the Prosecutor for a View; however granted a Rule to shew Cause.

The same Term.

The King against Beresford.

165. **M**R. *Abney* moved for an Information against the Defendant, for breaking open the Door of an Out-house, and untying a Greyhound belonging to *A. B.* and hanging him. Information *nisi* for breaking a Door of an Out-house, and hanging a Greyhound.

The Court seemed to think that it was Felony for breaking open the Door and hanging a Dog kept for Game.

But by Mr. *Abney*, in *Brook and Lambert*, it is held that a Greyhound is of a Base Nature, and that Breaking and Entering the Out-house was but a Trespass.

By the Court : Shew Cause, and by Mr. *Justice Page* : If they shew Cause that this is Felony, let them.

Hilary, sixth of George the Second.

Lateward against Doltson.

166. **M**R. *Parker* moved for a Prohibition, on a Suggestion that all Customs Motion for a Prohibition *nisi* to stay a

Suit in the Ar-
ches for a
Church-Rate.

Customs are tryable at Common Law, to stay a Suit in the Arches, where the Plaintiff had libell'd to compel the Payment of a Church-Rate of *Allhallows-barking*, made pursuant to a Taxation on the Inhabitants, by a Pound Rate, according to the annual Value of their Houses; whereas Time immemorial it has been Customary to tax according to the Personal Estates; that Defendant had pleaded this Plea below and made Affidavit of it here.

By the Court: Shew Cause.

The same Term.

The King *against* Clerk and another.

Motion to
quash an In-
dictment a-
gainst a Sca-
venger, for
not obeying
an Order to
pay over Mo-
ney to his
Successor, de-
nied.

167. **T**HE Defendants were indicted (as Tradesmen elected to be Scavengers, and Election confirmed by two Justices of the Peace) for not obeying an Order made by two Justices, requiring them to pay over the Sum of seventy-two Pounds, which was in their Hands as Scavengers, to their Successors.

Mr. *Fazakerly* moved to quash it, because the Justices have no such Power, by the Statute 2 *W. & M. c. 8. §. 11.* for that Statute gives Justices Power to commit for not accounting; but not to order the Money

ney to be paid over; but the succeeding Scavenger ought to bring an Action on the Statute for the Money remaining in the Predecessors Hands.

Mr. Justice Page: This is a Matter of great Consequence to the Publick, great Sums are raised and the Business very indifferently done; I do not know but Justices have a Power to Order the Payment of the Money over; it is certain they have Jurisdiction to make them account, and it would be odd if they should not have Power to make them comply so far with the Design of this Act; at this Rate it would be difficult to get the Money out of the Hands of the Scavengers that had a mind to keep it in their own Hands; he said that Defendants might demur if they would, and would not consent to quash it.

The same Term.

The King *against* Langley.

168. **M**R. Abney moved to quash an Indictment found at *Northampton*, on 5 *Eliz.* for exercising a Trade of a Roper at *East Hadden*, which is a Country Vill, and the Statute does not extend to Trades exercised in Country Vill or Towns,

Indictment quashed for exercising the Trade of a Roper in a Country Vill.

but only to Market Towns, 1 *Ventr.* 51.
1 *Mod.* 26. Mr. Justice *Page* said, That
this Exception had often been allowed in
his Time, and he did not know it was a
Trade within the Statute. Shew Cause.
2 *Keb.* 583. 3 *Keb.* 782, 790. Rule made
absolute to quash the Indictment.

The same Term.

The King *against* Commissioners and Trustees of Kingston Turnpike.

Motion to
quash an Or-
der of Sessions
to remove a
Turnpike,
averring that
it was erected
where the
Trustees had
no Power, but
denied.

169. **SIR** *John Strange* moved to quash
an Order of Sessions made at the
Quarter-Sessions for *Surry*, commanding
the Sheriff of that County to remove a
Turnpike; the Order was made at a Sessions
held the eleventh *July* last, and recites;
Whereas Complaint was made to them that
the Commissioners and Trustees had exceed-
ed their Power in erecting a Turnpike, &c.
And Whereas *W. C.* had given Notice to
the said Commissioners and Trustees that
he intended to make a Complaint to the
Sessions, &c. *And Whereas* neither the said
Commissioners, Trustees, nor any one on
their Behalf, had attended the Sessions to
defend themselves, &c. now upon examin-
ing Witnesses upon Oath, they adjudge the
said

said Complaint to be true, and order the Sheriff to remove the Turnpike, &c. and his Objection was, That it did in no sort appear that the Commissioners, &c. had any due Notice given; for the Notice, if any, might be of that Day, and then this Order was made, *ex parte* meerly, he said he admitted that by the late Act made against the destroying of Turnpikes, there was an Authority given to the Justices in Quarter-Sessions to order the taking down any Turnpikes unduly erected, after hearing and determining the same in a summary way; but the Commissioners ought to have had Notice.

Chief Justice: Before this Act the Justices had no Jurisdiction, for a Turnpike erected without Authority was a meer Nuisance, of which they had no Jurisdiction; but this Act gives them a particular Jurisdiction in this Case. Mr. Serjeant *Wright* shewed Cause.

Sir *John Strange*, to quash the Orders of Sessions; this made too hastily; a Complaint is usually made, a Copy is usually given, and Defence may be made next Sessions: The Order is made 16 *July*, and none appearing on the Behalf of the Trustees, order it to be removed; Excess of Power; not said in what that Excess of Power did consist, for that the Trustees

4

have

have Authority in many Instances, and therefore too general, and could not make a Defence on the very Day, and Notice and reasonable Notice is all the same thing.

Mr. *Fazakerly*: Before Complaint no Jurisdiction arises, and because he did not appear they order, he having Notice, but he ought to be summoned; indeed if it does appear he makes Defence, that alters the Case; but that Warrant or Summons ought to be made after Complaint is made, for before Complaint is made no Power attaches; nay Sessions on an Appeal could not proceed, unless the Appellant had given Notice of the Appeal; the Turnpike is said to be in the Town in the Order, but it is not said to be in the Highway, and then this Court cannot intend the Sessions has any Jurisdiction under the Statute; it may be a private Close, &c.

It does not appear to be erected in their Jurisdiction, for the Power is where the Turnpike is erected.

Mr. Serjeant *Wright*: It is to be presumed there was a Summons, as the contrary does not appear; the Queen against *Cosins*, in an Order of Bastardy, *Trin. 13 Anne*, the Court then said, as it was a remedial Law and not a penal Law, the Court would not suppose they had done wrong so as to vacate the Order; the same holds as to the

Ob-

Objection of want of Notice, for it appears there was Notice of an intended Complaint, and that is Notice of a Complaint; Notice of an intended Motion is a Notice of a Motion, and thereon this Court will stay Proceedings. If Partiality does not appear, or other Ingredient of Passion, a Proceeding cannot be too summary, where one or more are empowered to act in a summary way; and to suppose a Judge has not acted fairly, is to suppose he has acted criminally, and for ought appears, this may have given the Party Time; Commission of Gaol-Delivery is summary, and all at the same Time.

The Excess is said to be in continuing two Gates, which is expressly agreeable to the Statute, and it could not be set out more conveniently.

Objection; Not sufficient to follow the Words of the Statute, but this may be a Turnpike set up elsewhere out of their Jurisdiction. Answer; This appears to be set up at *Kingston*, which is within the Jurisdiction of the Justices.

Contra; No Notice can be given but in a judicial Proceeding, and that cannot be till the Jurisdiction attaches, and here it appears they made the Order on the Foot of that Complaint: Where an Order is made behind a Man's Back, it is too summary although a Jurisdiction is given, and what

what is contrary to natural Justice ought never to get footing in any Court of Sessions. It does not appear by the Order to be a Nuisance; and if this was erected in a Man's private Close, every Word of this Order would be true; and if a Man does set up a Gate in his own Ground, to take Money of People that go that way, he may take it safely, and the Justices have nothing to do in it; and the Word *Turnpike* has nothing in the Import of the Word to shew that it is placed in a publick Road. A Remedy cannot be had against the Sessions, either by Action or Information, and if they have not made a Summons, the Party is without Redress, and the Court will not presume more than in the Order is specified; the Notoriety of the Fact is said to be sufficient to justify this Order; in elder Times Attainders have been made on the Notoriety of the Fact, but cooler Times rejected that. At a Gaol-Delivery, if an Indictment be filed, the Prosecutor cannot go on till the Defendant is brought in by Process, and suppose he was present, has not he a Right to traverse till the next Assizes? this Court has a Power to proceed in a summary way, upon Complaint made of the Corruption of Bailiffs; in the Case of Mr. *Budgel* the Court would not proceed against the Bailiff till Notice was given him, and till

till he had Copies of the Affidavits, and a Day given to shew Cause; if the Party appears, and is willing to make his Defence, that waves any Objection to the Shortness of the Time of Proceeding; but if he does not appear, or if he appears, and insists upon further Time to make his Defence, and the Justices will not give him Time, this Court will punish him; the Queen against *Simpson*, argued whether if summoned and does not appear; it was doubted much whether he could be convicted behind his Back, though at last the Court said it was his own Laches, and at last held good; Summons there set out where Judgment is final, upon an Order, that is a Conviction and there being no Appeal given, this is a Conviction and Judgment.

Mr. Justice *Lee*: *Quære*, If in an Order of Sessions any Summons is set out.

Mr. Justice *Probyn*: Notice of Appeal, if it be given, is sufficient; the saying Notice is given, is saying sufficient Notice is given; before he makes his Complaint he gives Notice to the Party that he will complain, which is affording the Party an Opportunity sufficient to appear and make his Defence; the Power of the Trustees is circumscribed to the Words mentioned in the Act of Parliament. But the Power of the Justices at Sessions is general through the County of *Surry*. Order is good. Mr.

Mr. Justice Lee: This is a good Order, I do not think this is a Proceeding too precipitate: Whereas a Complaint was made, after Notice given, of an intended Complaint; no Case is cited to shew that it would be necessary in an Order to set out Notice given; and as it appears Notice was given before the Sessions was held, the Party had an Opportunity to appear and make Defence; and the Order has pursued the Words of the Statute, and it is averred in the Order, that the Turnpike was erected where the Trustees had no Power to set it. Order stands.

The same Term.

The King against Amis.

Moved to quash an Order made to discharge an Apprentice, for that his Master's Trade was not within the Statute, and that it did not appear that the Master was summoned.

170. SIR John Strange moved to quash an Order of Sessions for discharging an Apprentice upon this Exception, That the Trade of the Master was not a Trade within the Act of *Elizabeth*, and said that it was determined in the Case of the King and *Gately* in *Salk.* that the Power of the Justices extended only to such Trades as are within the Statute; and a Rule was made to shew Cause.

Mr. Fortescue shewed Cause against quashing the Order; The Order set forth that



that *William Stanmore* was put Apprentice to the Defendant to be instructed in the Trade of a Carpenter. The Order was originally made at the Sessions, and setting forth ill Usage discharged him, and ordered the Defendant to return Part of the Money.

As to the Exception, That it does not appear that the Defendant appeared or made Defence, it appears that Counsel were heard and Evidence examined, which shews a Defence made, and it was not necessary that the Master should appear, this being before the Sessions, and not before a single Justice only. 1 *Salk.* 67. 2 *Salk.* 490. As to the second Exception, That the Court of Sessions have no Power to order a Return of Money; the Cases cited are express in Point that they have this Power.

As to the Exception, That it does not appear that the Master had any Money with the Apprentice, and therefore ought not to be ordered to return it; the Order is, that the Master should return and pay back so much Money, which could not be unless he had received it.

As to the Case of a Carpenter not being a Trade within the Statute, *Gately's Case*, 2 *Salk.* 471. 1 *Saunders* 313. 2 *Keb.* 822. *Watkins's Case*, 5 *Eliz.* §. 2, 27, 30.

Sir *John Strange*: As to the Defendant not being heard, the Counsel and Evidence might

might be only on one Side; it is necessary that the Master should be heard, though not necessary to set it forth in the Order; upon the Appearance of the Master the Court may discharge; in the Cases cited it appears, that the Masters were bound over.

As to ordering him to restore the Money, this Power only extends to Apprentices bound out by Justices, which does not appear to be this Case.

This Court will not take any thing by Inference or Intendment in the Case of an inferior Jurisdiction.

As to this not being a Trade within the Statute, the King against *Wheatly*, 12 Geo. 1. Order quashed on this Exception. 5 Eliz. §. 30. founds this Jurisdiction; he admits the Foundation of this Objection to be overturned by the Words of the Statute, and he waived the Objection as to the Trade not being a Trade within the Statute.

Mr. Justice *Page*: As to not hearing the Master, there is no Occasion to set out that he was heard; Summons is equal to Appearance; there must be a Summons, but it need not be set forth. It necessarily follows, that though the Master had the Money; the Power is not confined to Parish Children.

Mr.

Mr. Justice *Probyn*: The Justices may order Restitution as incident to the Power of discharging.

As to the Notice, this is an original Proceeding at the Sessions; if it is an original Application to the Justices and then come to the Sessions, the Parties must have taken Notice. The Distinction between Orders and Convictions is, that in Conviction it is necessary to be set forth, but not in Orders.

Mr. Justice *Lee*: Notice is of the Essence of Justice, and therefore it is to be presumed that the Authority is well executed, unless the contrary appears. The Court will consider.

The same Term.

The King *against* The Inhabitants of St. Giles in the Fields.

71. **S**TATE of the Case. Two Justices removed *Jacob Maile* aged about nine Years, Son of *John Maile* deceased, by *Anne* his Wife, from *St. Giles's* to *St. Clement Danes*; that Parish appeals to the *Middlesex* Sessions, who made the following Order.

Whether the Settlement a Woman gains by her second Marriage, shall be extended to her Children by her first Husband, or only to herself.

VOL. I.

Q

Upon

Upon hearing of the Appeal of the Church-Wardens and Overseers of the Poor of the Parish of *St. Clement Danes*, in this County, against an Order of Removal, &c. and upon hearing what was alledged by Counsel, &c. it appears to this Court, that the said *Jacob Maile* is the Son of the said *John Maile* by the said *Anne* his Wife, that the said *Anne* before her Marriage with the said *John Maile*, and whilst she was a single Woman, became a Servant hired by the Year at four Pounds *per Annum* Wages, to one *Jacob Yellowby*, an Inhabitant in the said Parish of *St. Clement Danes*; and had under such Hiring lived with him in the same Parish for the Space of two Years, and thereby obtained a legal Settlement in the same Parish, which was the Place of her last legal Settlement, before her Marriage with the said *John Maile*; that the Place of the Nativity of the said *John Maile*, Father of the said *Jacob Maile*, cannot be found, and it doth not appear that the said *John Maile* gained any legal Settlement since his Birth, nor that the said *Anne*, since the Time of his Death, gained any Settlement until the Time of her Marriage with *Matthew Sincock* her present Husband, which was above two Years since, whose Settlement is in the Parish of *St. Martin in the Fields* in this County, which Parish the

the Counsel for the said Appellants doth insist to be the Place of the present legal Settlement of her the said *Anne*, by Virtue of her said Marriage with the said *M. S.* and also of the said *Jacob Maile* her Son, in Right of his said Mother, and that he hath not any legal Settlement in the said Parish of *St. Clement Danes*; and upon hearing what was further alledged by the Counsel for the Inhabitants of the Parish of *St. Giles in the Fields*, who insisted that the said Parish of *St. Clement Danes* ought to be deemed the Place of the legal Settlement of the said *Jacob Maile*, in Regard his said Mother's former Settlement, as aforesaid, was in the said Parish.

This Court, upon Consideration had of the Premises, is of Opinion that the said Parish of *St. Martin in the Fields* ought to be deemed the Place of the legal Settlement of the said *Jacob Maile*, as being the Place of the present legal Settlement of his said Mother, by Virtue of her said Marriage with the said *M. S.* and doth thereupon allow of the said Appeal, and doth vacate and discharge the aforesaid Order of the said two Justices of the Peace, and the same is hereby vacated and discharged accordingly; and order him to be removed from *St. Clement's* to *St. Giles's*, who are required to receive and to provide for him, &c. until they can free

themselves from the Charge thereof by due Course of Law.

Serjeant *Corbet*, to shew Cause, cited *St. George* and *St. Catherine's*, *Mich.* 1714, *Paulersberry* and *Wooden*. The Woman has gained a new Settlement, this is the present Settlement. In the Case of *Cumner* and *Milton*, it was not a Point settled, only said by Mr. Justice *Powel*, a Man must take a Wife with the Incumbrances.

Serjeant *Baynes* agreed, where a Woman had a Settlement in her own Right, Child should go to her last Settlement; this *Jacob Maile* was Son to *John Maile* and *Elizabeth* his Wife, who after his Death married again to one of *St. Martin's*; the Cases cited are, Where the Children removed with the Mother as Head of the Family; but this *Jacob Maile* was never in *St. Martin's*, and in *Cumner* and *Milton* what Mr. Justice *Powel* said, I suppose was assented to, because Court said nothing to the contrary, and cited *Salk.* 482.

Serjeant *Corbet* replied, The Children must be taken to be Part of the Family, and the Mother having gained a Settlement by her Marriage, the Children must follow it.

Special State, That *Anne*, Wife of *John Maile* was, before her Marriage, settled as a hired Servant in *St. Clement Danes*, and
Place

Place of *John Maile's* Settlement unknown. Sessions discharge the Order of two Justices removing to *St. Clement's*, and adjudge it in *St. Martin's*, where her second Husband lived and was settled.

Mr. Justice *Probyn* could not be satisfied that they could send the Child to any Place, as to the Settlement of the Mother, but the Settlement she had at the Time of making the Order,

Mr. Justice *Lee*: The sole Question is, Whether this *Jacob Maile*, on the Marriage of his Mother into *St. Martin's*, can be settled there; I think it has been determined in *Carth.* that the Settlement the Woman gained by the second Marriage shall not be extended further than to herself.

Mr. Justice *Page*: I never apprehended, on such Marriage, that second Husband was obliged to maintain the Children of the first; nor shall he draw them to his Settlement.

Mr. Justice *Lee*: The Child is now to be sent to the Place of its own legal Settlement, unless he could gain it anew by the second Marriage.

By the Court: Move it again before the End of the Term,

The same Term.

The King against Pinkney.

Indictment for
selling Corn
by false Mea-
sure quashed;
being an Of-
fence not in-
dictable.

172. **M**R. Serjeant *Draper*, in Support of an Indictment for selling Corn by false Measure, which was quashed *nisi*, said, That this was an Offence indictable; first it is a false Token; but that the Court denied; then he said it was a Cheat, which was an Offence indictable, and that the Court would not quash an Indictment for a Cheat, but leave them to demur; he said this was an Offence at Common Law, and though 22 & 23 *Car. 2.* directs a particular Punishment, it is an Offence at Common Law; he cited *Syd. 409*, King against *Burgoin*.

That an Indictment for a Cheat not quashed, *Mod. Cases 42.*

As to the Objection, very deficient, he said it would do well enough, because the least want of Measure was a Cheat.

Mr. Parker in Answer said, The Court had quashed Indictments of this Sort; Queen against *Jones*. King against *Wood*, 5 *Mod. 18.* a faulty Indictment. King against *Liggenham*, 1 *Mod. 71.* King against *Channel*, *Hill. 2 George 2.* that was upon

upon Demurrer. King against *Bryan*, *Easter* 3 *George* 2. in all which Cases, held that Indictments did not lie for these Things which are of a private Nature; and Indictment would not lie for making a Fool of a Man; very deficient is bad, 2 *Roll. Abr.* 80 *pl.* 18. *Cro. Jac.* 84. King against *Soerral*, *Cro. Car.* 380. King against *Flint*, 2 *Salk.* 687; in all which this general Charge held bad.

Court: This Indictment cannot be maintained, said it was very Faulty, and thought the Offence not indictable; upon the whole, Indictment quashed.

The same Term,

The King against The Inhabitants of Woolstanton, County of Stafford.

173. **T**HE Case was this: *Joseph Collison* of the Parish of *Woolstanton*, and a settled Inhabitant there, travelling through *Colwick*, broke his Thigh there, and could not be removed to *Woolstanton* without Danger of his Life, till his Thigh was set; this Misfortune reduced him to Poverty, but before this he had not received any Relief thence; *Collison* was attended by a Surgeon and other proper Helps, but not

Order of two Justices to pay a Surgeon's Bill for curing a Pauper, ill, because they have no Jurisdiction to make such Order.

by the Order of any Officer of *Woolstanton*; two Justices make Orders on the Overseers of the Poor of *Woolstanton*, to pay the Surgeon, &c. the Orders are found *prout*, and the Bills admitted to be reasonable.

Appeal from these Orders to the Sessions, where a Doubt arising as to the Legality of these Orders, the Court ordered, that the Clerk of the Peace, with the Counsel on both Sides, should attend the next Judge of his Majesty's Court of King's Bench that should come to *Stafford* Assizes, who is desired to give his Opinion upon the Case; ordered further, that the Clerk of the Peace should report the Opinion to the Justices at the next general Quarter-Sessions, after such Opinion taken; that the Parties concerned do then and there attend without further Notice, and in the mean time, by Consent of all Parties, the Appeal against the said Orders to be respited and saved without Prejudice to either Side.

The Orders appealed against were three, viz. First, for Boarding, Second, for the Nursing, Third, for the Curing the said *Collison*, and were as follows: *Stafford*, to wit. To the Overseers of the Poor of the Parish of *Woolstanton* in the said County.

We whose Hands and Seals are hereunto set and subscribed, two of his Majesty's Justices of the Peace and *Quorum* for the said County,
and

and both of us residing in the same Division, within the said Parish of *Woolstanton*, do hereby order you, the said Overseers, to pay unto *Nicholas Baker* the Sum of sixteen Pounds, and eighteen Shillings for Boarding and other Necessaries, for *Joseph Collison*, a Pauper of the said Parish, whilst he lay ill of a broken fractured Thigh. Dated the first Day of *October Anno Domini 1731. Thomas Allen, Joseph Fervis.*

The other two were in the same Form, for the Nurse and the Surgeon.

Afterwards, at *Michaelmas* Sessions, an Order is made reciting the three Orders of two Justices, and the Appeal to the Sessions, and the Adjournment by Consent, and that Mr. Justice *Probyn* was at the last Assizes for the said County, and that the Judge being attended gave his Opinion in the Words following.

I am of Opinion, that where any settled Inhabitant of a Parish going upon his lawful Occasion or Business, and by Accident or Misfortune is reduced to a Necessity of being assisted and relieved, the Justices of the Peace have Power to direct and Order the Overseers of the Poor of that Parish to which he belongs, to relieve such Person and to pay for such necessary Support and Assistance as he has received, though by Persons of another Parish; which said Opinion

nion being this Day presented and read to the Court, it is ordered by the Court that the said Orders made by the said two Justices be confirmed, and accordingly by the Court they are confirmed.

Mr. *Parker* to shew Cause why these Orders should not be quashed.

Several Objections have been made to the Form of the Orders, but it appears that the Merits have been referred to a Judge of Assize, he has heard the Parties and given his Opinion upon the Merits; and therefore it is apprehended all Objections in Point of Form are waived; his Determination is in the Nature of an Award, and final and conclusive between the Parties. A Court of Justice will never allow of a Plea in Abatement, after a Plea in Bar; so if a special Verdict refers a particular Point to the Court; the Court will intend all other Matters but that which is the Doubt of the Jury. *Goodale's Case*, 5 Co. 96, 97. 2 Ro. Abr. 702. Letter B. pl. 4. Hob. 262.

First Objection; That the Justices Orders are not concluded properly, with the Words *Given under our Hands and Seals*, but only said *Dated, &c.*

Answer. But it sufficiently appears, that the Orders were under Hand and Seal, for it is said, *we whose Hands and Seals are hereunto set.*

Second

Second Objection; That these being Orders for the Relief of poor Persons, it should have appeared to be by Justices residing within the Parish; which it does not, and it is not shewn that there were no Justices within the Parish.

Ans. As to this Objection, the Act is only directory, and like an Order of Removal, which need not be by the Justices of the Division. 2 *Salk.* 473.

Besides, the Act only relates to Orders made for Parish Pay, ordered to a particular Parishioner for Subsistence, and not in this Case.

Third Objection; That it does not appear that the Overseers were summoned before the Orders made, which is required by the Statute 9 *George I. cap. 7. §. 1.*

Ans. The same Answer is to be taken as to this, as was to the last Objection, that the Statute only relates to Parish Pay, ordered to a particular Parishioner for Subsistence, and not to the Instance of Relief, now under the Consideration of the Court. But supposing a Summons necessary, the Court will intend that the Justices proceeded regularly, and that there was a Summons, unless the contrary had appeared on the Face of the Orders.

The King against *Venables*, *Trin. 11 Geo. 1.*
Conviction for suppressing a disorderly Ale-house,

house, and Commitment for continuing the Ale-house after the Order to suppress it, It was objected that it did not appear, that the Party was summoned or heard; but resolved by the whole Court, that they would intend the Justices proceeded regularly, and that there was a Summons; and the Conviction was confirmed; indeed the Court declared, that if a defective Summons had been set out, they could not intend a good one.

So in the Case of the King and *Holland, Trin. 5 George 2.* which was an Order of Bastardy, though it did not appear that the Defendant was summoned, the Order was confirmed; because the Court would presume that the Justices had done Right; and upon that Occasion, the Cases of the Queen and *Cripps, Easter 11 Anne*, the King against *Blackwell, Mich. 4 Geo.* and the King against *Clegg, Mich. 8 George 1.* were cited, where the same Objections had been over-ruled.

Fourth Objection; It does not appear that the Facts were made out upon Oath.

Ans^w. This falls under the same Consideration as the last Exception; it is an Incident to be presumed by the Court.

I come now to that which is the principal Question between us, and that is, Whether in case a settled Inhabitant of a Parish going on his lawful Occasions or Business,
and

and by Accident or Misfortune is reduced to a Necessity of being relieved, the Justices of the Peace have Power to Order the Overseers of the Poor of that Parish to which he belongs, to relieve such Person, and to pay for such necessary Support and Assistance as he has received, though from Persons of another Parish?

We are in Possession of the Opinion of the Judge of Assize, that the Justices have that Jurisdiction, and I humbly hope that the Judge's Opinion shall receive the Sanction of this Court.

By Law every Parish is charged with the Relief of their own Poor, and the Justices of the Peace are intrusted with the Care that the Poor shall have the Benefit of this Provision.

The Overseers of the Poor are subordinate to, and are to obey the Orders of the Justices for the Relief of the Poor, unless they are discharged or altered upon an Appeal to a superior Jurisdiction.

The Power which is lodged in the Justices of the Peace, for the Relief of the Poor, is a general Power, and extends to all kinds of Relief, whether by Medicine or Surgery, the same being particularly specified in 43 *Eliz.* and the Justices Power is not merely confined to the Subsistence, that the Poor may not be famished.

This

Sessions Cases adjudged in the

This is a Law of Charity, and founded upon the Divine Law, which exhorts, I should say, commands us to relieve the Sick and Needy, and is therefore to receive a large and equitable Construction.

And if it is to receive a large Construction, why have not Justices of the Peace the Power to make Orders upon the Overseers for the Relief of the Poor out of the Parish, as well as within it; there are no Words in the Statute to restrain their Jurisdiction to Poor within the Parish; and Persons who are real Objects of Relief are as much so, out of the Parish as within it.

If a Man meets with a Misfortune fifty Miles from his own Parish, which requires immediate Assistance, if this Notion prevails, that the Justices of the Peace cannot order Relief, the Man must perish, unless the Neighbourhood where the Accident happens, have Humanity enough to relieve him at their own Expence.

This is such a Defect as I hope cannot justly be imputed to the Laws relating to the Poor.

I beg leave to mention a Case which will shew, that it is no new thing for Justices of the Peace to have a Jurisdiction by Implication; by 5 *Eliz. cap. 4.* Power is given to Justices to oblige Servants in Husbandry to serve for Statute Wages, and though the

Statute says nothing of compelling the Master to pay the Wages, yet the Courts of Law allow the Justices that Jurisdiction, and will even intend the Service to be in Husbandry, unless the contrary appears. The King against *Gouch*, *Salk.* 441. The King against *Gregory*, *ibid.* 484, 485. The Queen against *London*, *Mod. Cases* 204, 205.

I expect to have some Cases cited where it has been determined, that Justices of the Peace have no Power to make Orders of this Nature; I have looked into several of them, and cannot find that one of those Cases was debated; the King against *Smith, Hill.* 10 *George* 1. Indictment quashed on Mr. *Fazakerly's* Motion, because founded on an Order out of the Justices Jurisdiction, having no Relation to the Relief of the Poor. The King against the Inhabitants of *Holbeach*, *Easter* the first of *George* 2. quash'd, no Person appearing to shew Cause. The King against *Slow*, *Mich.* 6 *George* 2. Indictment quashed, because Justices had no Power to make the Order. The King against the Overseers of *Woodbury* in *Devonshire*, *Mich.* 6 *George* 2. quash'd, no Cause being shew'd.

By the 13 *Eliz. cap.* 2. a convenient Stock is to be provided by the Church-Wardens and Overseers of every Parish,
with

with the Consent of two or more Justices of the Peace, for the Employment of such of the Poor as are able to work, and competent Sums of Money are to be raised for the Relief of the Lame, Impotent, and such others as are not able to work, and they are to do and execute all such other Things as well for the disposing of the Stock, or otherwise concerning the Premises, as to them shall seem convenient.

In *Dalton's Justice*, cap. 40, fo. 100. the old Edition, Mr. *Dalton*, in considering what Poor are intitled to Relief, ranks them under two Classes.

First, Poor by Impotency or Defect. The aged and decrepit that are past Labour; and he gives several other Instances.

Second, Poor by Casualty. The Person casually disabled or maimed in his Body, as the Soldier or Labourer maimed in their several Callings; and his Observation upon this is, *si non pavisti occidisti*.

But it may be objected, that this is the casual; as to that the Poor are provided for in respect to the Benefit which the Parish where they are settled, is supposed to have received from their Labour; and as the Act of God prejudices no one, it ought not to subject the Parishioners of one Parish to support the Parishioners of another, who

who by Accident require immediate Relief.

St. John against St. John, Hob. 78. Debt on Statute 21 H. 6. against Defendant as Bailiff of ——— for not returning his Burgeſſs to Parliament, where the Words of the Statute are, That the Sheriff ſhall ſend his Precept to the Mayor; if there be no Mayor, then to the Bailiff; the Plaintiff declared that the Sheriff had made his Precept to the Bailiff without averring there was no Mayor; and, after Verdict for the Plaintiff, it was held upon a Motion in Arreſt of Judgment, that the Declaration was good, for the Court will not intend that there was a Mayor except it be ſhewed, and if there was one, it ſhould come properly on the other Side.

Mr. Fazakerly, ad idem. As to the Oath, Juſtices cannot order Relief without Oath is made, by the Statute, and the Jurisdiction muſt be conducted by the Reſtrictions laid down in the Statute, and the Words there are prohibitory to grant Relief without it, and nothing ſhall be preſumed in favour of Orders; this has been the conſtant Doctrine; does not appear to have been made, nor that the Pariſh had reſuſed; the Order is to pay for Boarding and other Neceſſaries, the Juſtices have no Power to order any ſuch Payment; it does not appear it was due. *Trin. 7 Anne,* The

Sessions Cases adjudged in the

Queen against the Inhabitants of *Balsam*; the three Justices held that the Justices of the Peace had no such Power to order these Payments, but the Persons named in the Order not being well described in the *Certiorari*, the *Certiorari* was quashed.

The same Term.

The King *against* The Inhabitants of
Hexham.

Exceptions to
an Order of
Bastardy.

174. **M**R. Serjeant *Draper* moved to quash an Order of Sessions made at *Northumberland. Alexander Johnston* upon hearing of his Appeal from the Order of Sir *Edward Blackett*, Baronet, and *George Bowes*, Esq; for the Payment of a Weekly Allowance as putative Father, for the Maintenance of a Bastard Child, begotten on the Body of *Eliz. Maughan*; It is ordered that the said Order be, and it is hereby quashed.

Objection 1. Not said to whom the Appeal was made.

2. Nor how much the Allowance was to be.

3. Nor said whether the Child was Male or Female.

4. Nor said where the Child was born, or chargeable to any Parish.

5. Not

5. Not said he was putative Father of that Child.

6. Nor of what Date the Order is.

7. Nor of what County Sir *E. B.* and *G. B.* are Justices. Shew Cause.

The same Term.

Parish of Stroud *against* Lidney, in Gloucestershire, November 24, 1732.

175. **T**WO Justices remove *Martha Brewer* single Woman, from *Stroud* to *Lidney*; the Parish of *Lidney* appeals to the next General Quarter-Sessions, who confirm the Order of two Justices, and state the Case specially, That the said *M. B.* about three Years ago went to the said Parish of *Stroud*, and there hired herself to *William Wake* of the said Parish, Maltster, in Manner following, that is to say, for a Quarter of a Year, and if the said *Wake* and the said *M. B.* liked one another, she was to continue for a Year, and to have three Pounds for her Year's Wages; that she entered on the said Service, and continued therein for one whole Year, and received the said Wages of three Pounds.

Hiring for a Quarter, but to continue for a Year if both Parties liked, and continuing a Year said to make a Settlement.

Sessions Cases adjudged in the

Mr. *Yate* moved to quash these Orders, and insisted that this was a Settlement; the Statute is to be favourably construed in Favour of Settlements. *Easter, 1st George 1. Solebury against ———* Because these Statutes have taken from People the Right they had at Common Law, under which an Inhabitaney always gained a Man a Settlement; so the Statute which requires a Rentage of a Tenement of ten Pounds *per Annum* to gain a Settlement is satisfied; if a Man rents seven Pounds a Year of one, and three Pounds a Year of another, this gets him a Settlement. *Trin. 3 Geo. 1. Southsydenham against Lamerton.* So a Service for a Quarter of a Year, and then a Hiring for a Year, and a Service for three Quarters, gets a Settlement. The King against the Inhabitants of *Ayno, Mich. 1 George 2. 8 & 9 W. 3.* is only explanatory of *3 & 4 W. & M.* Here the Contract seems to be made with Caution, for it includes a Year, which is very plain from the Provision that was made for the Settling the Year's Wages; the first Quarter of the Year is distinguished from the rest, because from that Time the Contract was absolute and binding to both Parties; it is true after the Expiration of that Quarter it was in the Election of either Party to determine the Contract; yet as that was not done, but on the contrary the

the Contract is assented to by both Parties
and fully executed, it gains a Settlement.

The same Term.

**The King *against* Parkins, Overseer
of Studley.**

176. **A** Single Woman of *Studley* big with Information]
Child of a Bastard, was sent back nisi, against
to *Studley*. *Parkins* threatned with all the Parish Offi-
Severity of the Law to force her to marry cers, for for-
a Stranger of another Parish against both his cing a Marri-
and her Consent, he giving five Guineas to age.
the Husband, and keeping him in Liquor.

By the Court : Shew Cause why Infor-
mation should not go.

Easter, sixth of George the Second.

The King *against* Crest.

177. **T**HE Defendant was committed Exceptions to
by a Justice of Peace of *Surry*, a Mittimus on
to the County-Gaol of that County, for a the Return of
Robbery on the Highway; and being a Habeas Cor-
brought into this Court on the Return of pus to bail a
an *Habeas Corpus*, Person for a
Robbery on
the Highway.

Sessions Cases adjudged in the

Mr. *Burnett* took Exceptions to the Return, in order to bail the Defendant.

First, It is not said in the Warrant of Commitment, that the Justice was a Justice of the County. 2 *Inst.* 52; 591.

Secondly, It does not appear by the Commitment, that the Defendant was examined in the Presence of the Justice, or brought before him, and without that the Justice has no Authority. *Hale* 92, 3, 4. *Stat.* 2 P. & M. c. 10. 3 *Ro. Rep.* 192, 218. It is not certain when and where the Robbery was committed, which ought to be in Order, that the Defendant may have the Benefit of the *Hab. Cor. Act*, *Car.* 2. and produced Affidavits to the Fact, and the Court ordered a Rule to shew Cause, and Notice to the Justice. An Affidavit of Confession of another Man, that the Defendant did the Fact, bailed by four Bail in one hundred Pounds each, and two hundred Pounds the Principal.

The same Term.

The King *against* The Inhabitants of
Brackley St. Peters.

Justices order
eleven Pounds
to be allowed
for Law
Charges,

178. TWO Justices make an Order to
allow eleven Pounds expended
for

for Law Charges. On Appeal to the Sessions they disallow this as not warranted by Law, and order the Church-Wardens and Overseers to refund the Money to the present Overseers, and to be struck out of their Account.

which is disallowed on an Appeal, and the Money ordered to be refunded to the present Overseers, and struck out of their Accounts.

Sir Thomas Abney moved to quash the Order of Sessions; now upon full hearing it does not appear when the Sessions was held, but they appear, upon an Appeal to a former Sessions, to have proceeded, and do not say when that first Sessions was held.

2. Church-Wardens Accounts are not examinable by the Sessions, *Salk.* 471. Where Appeal is given by the Statute to two Justices, a Thing cannot commence originally at Sessions; here an Appeal is given; Order is to distinguish to whom it is to be paid, and who are to pay; they have no Power to Order Money to be struck out.

Answ. They determine at the second Sessions; but the Court will presume the first Sessions was held regularly, as the contrary does not appear; better to describe Church-Wardens by their Office than by their Name; *Certum est quod certum Reddi potest*; 'tis certainly so done in Orders of Removal; if they can examine the Accounts on the Statute they may order it to be struck out, the rather as it ought not to have been in.

Sessions Cases adjudged in the

Mr. Fazakerly in shewing Cause.

The *First Exception*; That it does not appear that the Appeal was regularly adjourned.

Second Exception; That it does not appear when the first Sessions was held.

The Day does appear, that first Sessions was held on a particular Day, but as to the Adjournment of the Appeal, when once there is an Appeal lodged, it is not necessary to adjourn.

And the Construction of 43 *Eliz.* has been, that it is not material whether it is heard one Day or another.

Third Exception; That Disbursements of Church-Wardens are not examinable at Sessions, but Church-Wardens have two Capacities; one as Overseers, not by Virtue of any Appointment, but by Virtue of the Statute.

Mr. Noel on the same Side: This is not like the Cases where an Appeal must be lodged at the next Sessions, but the Law is open in this Case, and though it was necessary it should be adjourned, yet it is not necessary the Adjournment should appear on the Order.

2. Time does appear.

As to the Third, it must be taken in this Case, that nothing of the Office of Church-Wardens, but what was conjoined to the Office

Office of Overseers, was in Question in this Case.

Sir *Thomas Abney* in Support of the Exceptions: The Appeal being made at the former Sessions, it does not appear what was done on that Appeal, which ought to appear; and the Sessions must make some Entry upon it to shew what they have done, taking it for granted, by the Act of Parliament they may appeal at any Time, yet must shew when the Sessions was held, for it does not appear it was held at a Time they had Power to hold a Sessions. The King against *Saunders*.

As to the Third, It is not shewn that Church-Wardens acted as Overseers, and that it is relating to any Disbursements as such.

4. Whenever an Act of Parliament gives an Appeal from two Justices, the Sessions cannot proceed in the first Instance. *Salk: 471.*

The Order is for the Church-Wardens and Overseers of 1730, to pay to the present Church-Wardens, which was in 1732, which is an Order neither the two Justices nor Sessions could make; they ought to have granted a Warrant of Distress; Sessions could not make an Order to strike out Part of the Disbursements; it does not appear to what Church-Wardens they were to pay.

Mr. *Fa-*

Mr. *Fazakerly* : This Court will in no Instance presume the Sessions irregular, unless it appears ; if it be said there was an Appeal, it is not necessary to shew what Day the Sessions was held, for it is of no Use ; and they have said they have heard this Appeal ; it is sufficient, and Court will intend every thing antecedent right.

It appears this was an Appeal against the Disbursements of the Church-Wardens and Overseers of the Poor, and therefore must be taken to be by Virtue of the Power they are invested with by the Statute. The Clause expressly mentions a Cess, and gives an Appeal to the Sessions ; the two Justices have nothing to do but only to state the Account ; there is no Occasion for any Order to be made by the two Justices, only to allow, unless they find a Surplus in the Officer's Hand, then they are to make an Order to pay over.

As to the Exception, That this Disbursement was in 1730, and Order in 1732, therefore an intervening Year ; if an Act of Parliament gives a Liberty to come and appeal at any Time, the Order must be made on the present Officers then acting in that Capacity, and in an Action of Account in this Court it has been held better to describe Overseers by their Name of Office. As to ordering to strike it out of the Article

ticle of the Account, they are enabled by the Act to take such Order as they think fit, and therefore might properly do it. The Court took Time to consider of it.

Trinity, sixth and seventh of George the Second.

The King *against* Cotton.

179. **M**OTION for an Information An Information denied against a Justice who made an Order without summoning the Party, because the Order, though in nature of a Judgment, is yet not strictly a Conviction. against Defendant, who with another Justice made an Order of Bastardy upon one *Fitzgerald*, without summoning him to appear before them to make his Defence; upon Appeal to the Sessions he was acquitted, and put to great Expences, which it was insisted was contrary to natural Justice. By 18 *Eliz. c. 3.* the Justices upon Examination of the Cause and Circumstances, may make an Order according to their Discretion. *Mich. 13 Geo. 1.* The King against *Cleg.* The King against *Holland.* The King against *Venables.* The King against *Squire* and *Allington, Hill.* 12 *Geo. 1.* and Summons is as old as the Creation. 3 *Gen. v. 9.*

On a Rule to shew Cause, Serjeant *Corbet* for the Defendant: On penal Statutes the Defendant has only a Time in the first Instance

Instance to make his Defence; but in Cases of Bastardy it is different, for he has a proper Time by the Statute given to be heard at the Sessions; no more necessary to have Notice here than in Indictment.

But by Mr. Justice *Page*: This is a Judgment, the other is no more than a Charge; it would not be necessary, in Cases of Removal, to give Notice to the Parish to whom the Pauper is sent, which is never done. *Mich, 4 Geo. 1.* The King against *Blackwell*. Order of Bastardy good, though it did not appear the Party was summoned.

Sir *Thomas Abney* on the other Side: This is an Adjudication, and equal to a Conviction; an Indictment is only a Charge till the Judgment.

Mr. Serjeant *Hayward*: Examination requisite by the Statute; deprived of his Testimony.

Mr. Justice *Page*: No Man in an Office can be supposed to be so ignorant as not to know it is against natural Justice to convict a Man without a Summons; the Examination ought to be so made that the Truth may appear, and that must be by examining both Sides, otherwise it is partial; the Scandal, the Expence and the Disorder in Mr. *Fitzgerald's* Family, are Things that ought to be considered; here was no Taking by Warrant, and therefore an Action of false

Imprisonment would not lie ; and this is the only Method can be used to punish the Justice.

Mr. Justice *Probyn* : The principal Objection about a Summons is right in Law, and in Reason ; though Appeal is given, yet the Order is a Judgment, and puts the Man under Difficulties ; possibly an Action on the Case might be framed ; this may possibly have been only an Error in Judgment ; hard to grant Information.

Mr. Justice *Lee* : If this was strictly a Conviction, an Information ought to be granted ; but it is otherwise in the Case of Orders ; and no Summons was then held to be necessary to be set out ; I do not give any Judgment where a Summons is necessary, and it is doubtful whether this Summons is necessary. Discharged the Rule.

And if Justices take up a Man by Warrant for being putative Father, they may bind him over to Sessions without making an Order, and Sessions may make an original Order.

The same Term.

The King *against* The Commissioners of Sewers in Suffex.

180. NOTICE must be given to the Commissioners of Sewers before

No *Certiorari* to remove Orders of Commissioners of Sewers without Notice.

the

the Court will grant a *Certiorari* to remove their Orders.

The same Term.

The King against Brooke.

Exceptions to
Orders made
by Sessions
touching
Turnpikes.

181. **T**HE *Christmas* Sessions at *Chester* make an Order; *Whereas John Barloe* of *Congelton* hath appealed to this Court, thereby complaining, &c. Sessions has no Jurisdiction; as the Stones were not got by Order of five or more Trustees, necessary to shew their Jurisdiction, and the Party may bring his Action for the Gravel. The King against *Abell*, 5 *Geo. 2. Trin.*

The Sessions, to which the Appeal is made, is not said to be the next after the Fact was done against the Allowance made him by the Trustees of the Roads, nominated and appointed by Virtue of a Statute made for repairing the Roads leading from the Southern Parts of *But-Lane* in the Parish of *Lawton* in *Cheshire*, to *Lawton But-Lane*, and from thence to *Henshalls Smythy* upon *Cranage Green*, for Materials had and taken out of his Lands for repairing the said Road; the Appeal is respited to the next General Quarter-Sessions.

The

The *Easter* Sessions make an Order; *Whereas* by the Statute made for the Repairing, &c. It is enacted, That the Trustees of the Roads therein nominated and appointed, or any five or more of them, might appoint a fit Person to be Surveyor of the Roads to see the same be repaired; that such Surveyor might, by Order of the said Trustees, or any five or more of them, dig or gather, in the several Grounds of any Person, such Materials as in the said Act are mentioned, and to carry away the same for repairing the said Roads, paying for the same such Rate as the said Trustees, or any five or more of them, should judge reasonable; and that if any Difference should arise between the Trustees, and the Owner or Occupier of such Ground, touching the Damages thereby done to such Owner, the Justices of the Peace at the next General Quarter-Sessions of the Peace to be held for the said County, should adjudge, assess and finally determine the same. *And Whereas* J. B. of C. did appeal to the *Christmas Sessions* against the Rates allowed him by the Trustees, for Stones gathered and carried away out of his Ground, for the Repairs of the Roads, by or by the Order and Appointment of S. B. nominated Surveyor of the said Roads, in Pursuance of the said Statute; upon hearing which

2

Appeal

Appeal *that Sessions* continue it over to the next. Now upon hearing which Appeal, it is ordered by the last mentioned Sessions, that the said *S. B.* do further, upon Notice of this Order, by a Copy thereof to him delivered, pay unto the said *J. B.* the Sum of ten Pounds *per Tun* for his Damages, for every Tun of Stones by him the said *S. B.* or by his Order carried away out of the Grounds of the said *J. B.* for Repair of the said Road mentioned in the said Statute. *Stat. 4 George 2. fo. 77, 78.*

Objection; If the Surveyors have no Orders, *Barloe's* only Remedy is by Action, and in a summary way.

The Appeal is lodged, and nothing to appeal from; but is supposed to come originally to the Sessions.

The Order not stating that the Trustees and Proprietors did not agree about the Rate, nor does it appear that the Stones were carried away.

The *King* against *Abell*, *Trin. 2 Geo. 2.* Mr. *Fazakerly* moved to quash a Conviction against the Defendant for not accounting according to a Clause in a Turnpike Act; and excepted to the Conviction, that it did not appear by the Evidence set forth in the Conviction, that *Abel* was appointed Receiver, which he ought to have been; or else there is no Jurisdiction arises to the Ju-

stices

ices ; and then the Court thought that a
atal Exception. Shew Cause.

The same Term.

The King against Fuller.

82. **C**ONVICTION for selling Brandy with-
out Licence; Objection 12 & 13
V. 3. cap. 11. §. 18. prohibits selling Bran-
y by Retail to be drank in their Houses
without Licence, and puts them on the
ooting with Alehouses. 7 Anne, cap. 14. As
or Distillers, and all other Shopkeepers
who do not suffer Tipling; and the for-
mer Statute is repeal'd, 2 Geo. 2. fo. 343.
No Person presume to sell Liquors in any
ess Quantity than a Gallon, without Li-
cence.

Convictions
must set forth
that the Party
was summon-
ed.

2. Penalties forty Pounds to the Poor ; the
other fifty Pounds; one to the King, the other
to the Informer ; not said on whose Behalf
the Information was made; undertook to sell
Brandy without Licence, not said how much,
Anstell against Andrews, on *Qui tam*, Mich.
13 Geo. 1. B. R. Information says he sold
by Retail; but does not say what that Re-
tail was, and 2 Geo. 2. does not oblige Per-
sons to take a Licence, unless to sell under
a Gallon ; and a Gallon is Retail Measure ;

does not say Oath was made of his being summoned; nor that it appeared to them he was summoned; nor said when and where Defendant was convicted; nor to whom the Forfeiture was to be paid; does not appear he permitted tippling in his House; does not appear but Defendant dealt more in other Goods; nor that it was a common tippling House; Witnesses ought to be examined at the Time of Conviction, when a Day was given to appear, they do not *prove* it was drank in his House; but *say* it was drank in his House; it is said he was summoned but not said by whom, and the Reason is because if he is not summoned he might have an Action against him for a false Return of a Summons. Quash'd.

Hilary, sixth of George the Second

Parish of Eardisland against Lempster

A Service under different Hirings for a Year, so that there be a Hiring for a Year, will gain a Settlement.

183. **T**O Shew Cause why Order of Sessions should not be quash'd *E. W.* hired from the End of *May* to the beginning of *May* following; then was hired for a Year with the same Master, and served till the middle of *July*, and then ran away without his Consent, and cited

Stat. 5 Eliz. to oblige Servants to stay, and
12 Car. 2. and 3 & 4 W. & M. and 8 & 9
W. 3.

Mr. Fazakerly agreed, That the Latter
Cases have held that a Service under differ-
ent Hirings to be good; here the Church-
Wardens of *Eardisland* complain that *E.W.*
single Woman, came lately to dwell in
said Parish of *E.* not having gained a legal
Settlement there, nor produced a Certificate
to them, owning her to be settled elsewhere,
and that *E.W.* is now with Child of a
Bastard, and likely to become Chargeable
to *E.* and as it appears to be true that she
is settled in *L.* she is removed from *E.* to *L.*

The Sessions discharge the Order of the
two Justices, and state specially, That it
appeared by the Oath of the said *E.W.*
that she was hired by *S.M.* of *C.* in the
said out Parish of *L.* as a Covenant Servant,
from the latter end of *May* 1731, to the
beginning of *May* 1732, for two Pounds
two Shillings and six Pence Wages, and that
she continued in her Service for that Time;
that about a Day or two before the Expi-
ration of the Time, she was again hired by
the same Master for a whole Year, at two
Pounds five Shillings Wages, and conti-
nued in the same Service, pursuant to the
second Hiring, to the middle of *July* fol-
lowing, and then went away from her Ser-
vice

Sessions Cases adjudged in the

vice without her Master's Consent. The King against the Inhabitants of *Aynoe, Mich.* 4 *Geo.* 2. The Order of Sessions was quash'd.

The same Term.

The King against Mather.

Justice not
punishable
for what he
does in Ses-
sions.

184. **J**USTICE of Peace not punishable for what he does in Sessions. *Stamford* 173, 12 *Co.* 23. 2 *R.* 3. 10. Abbot of *Croyland's Case*, *Parliament Cases* 24.

Mich. seventh of George the Second.

The King against Joakam.

An Informa-
tion *qui tam*
cannot be
quashed.

185. **O**N shewing Cause why an Information *qui tam* should not be quash'd,

Mr. *Lacey* said, It is the Party's Suit, and in the Nature of a civil Action, *Cro. Car.* 316, 4 *Inst.* 272. it is only a Direction to the Officer, and the Information would be good without Affidavit, even on a Writ of Error. *Carth.* 503. *Salk.* 376. The Affidavit was made by another Person than the Informer, for the Words of the Act mention Informer, or Relator, and therefore not neces-

lary to have the Informer's Affidavit. On the other Side it was said, That the Information coming in by *Certiorari*, the Defendant cannot take Advantage of this by any other way, nor can the Information be taken off the File, so it must be quashed, or the Party be without Remedy. The Information is good, but irregularly filed without Affidavit, like an Action brought where a Man is to be held to Bail; if no Affidavit is made before the Writ sued out Proceedings are irregular.

Mr. *Lacy* : The Offence was committed before the Time laid in the Information, though after Sessions begun, which is like a special *Memorandum*, which the Court agreed to be well enough. Adjourned.

The same Term.

The King *against* Bletfho and another.

186. **A** *Mandamus* had been granted to the Defendants Church-Wardens of *St. George* in *Stamford*, to deliver up all the Publick Books and Papers in their Custody.

Sir *Thomas Abney* moved to supersede this *Mandamus*, as it will deprive Defendants of the Benefit of making Defence if they are sued

Motion to super se dea
Mandamus granted to Church-Wardens, to deliver up Books and Papers in their Custody, refused.

Sessions Cases adjudged in the

for Money had and received by any of the Parish; and besides there is a proper Jurisdiction in the Justices of the County, nor does the Affidavit, on which this *Mandamus* was granted, specify what sort of Writings are in their Custody.

Mr. Justice *Page* said, he did not know how the Poor could be relieved, unless the succeeding Overseers can see how the Money has been disposed of.

N. B. The *Mandamus* was prayed by some that called themselves Overseers, against others that were actually Overseers. Court would not grant it.

The same Term.

The King against Kempson.

Motion to quash an Order to maintain Defendant's Son's Wife after Divorce.

187. ORDER on Complaint of Church-Wardens of ——— made at *Stafford*, upon an Appeal confirmed on Defendant to maintain his Son's Wife after a Divorce *a mensa & thoro*.

The General Quarter-Sessions only have a Jurisdiction *ab initio*, and the Matter cannot come before them *per saltum* by way of Appeal.

2 *Salk.* 476. *Trin.* 5 *Geo.* 1. The King against *Mundy*. Order to maintain the Party's

y's Wife's Mother, and held the Statute did not extend to Collaterals; Rule to shew Cause on Sir *Thomas Abney's* Motion to quash; 43 *Eliz.* is but only to natural Relations.

The same Term.

The King *against* Gallard.

88. **T**HE Defendant was indicted at the Sessions held for the County of the City of *Norwich*, that he being a Person above the Age of nineteen Years, and of disorderly Behaviour and ill Fame, abetting, assisting and incouraging of one *Thomas Hacon* to run naked, except Garters and Stockings, in a certain publick Place, within the Walls of the said City, called *Chapple-Field*, on the 9th Day of May in the 6th Year of *George 2.* at the City of *Norwich*, in the County of the same City, in a certain publick Place there within the Walls of the said City, called *Chapple-Field*, with Force and Arms, of his own free Will immodestly, openly, and publickly did appear and shew himself running with the said *T. H.* for the Space of one Hour, with his Body naked, and without any Covering from his Neck to the Waste, to and amongst a great Num-

Exceptions to an Indictment against a Person for running about in a publick Place naked.

ber of the King's good Subjects of both Sexes, then being and walking in the said Place or Field, and laid over again for shewing himself for half an Hour, &c. to the great Scandal, Disturbance and Offence of his Majesty's good Subjects then and there being, contrary to all Morality, Decency and good Order, and against the Peace of our Sovereign Lord the King, his Crown and Dignity.

Sir *John Strange* moved to quash this Indictment, because here is no Charge against *Hacon* that he did run naked, but only recites the Abetting of *Gallard*.

It does not say in their Presence, they might be walking in the said Field at a great Distance; besides if this is an Offence, it would arraign that Punishment prescribed by the *Stat.* of *Queen Anne*, of whipping Vagrants naked, from the Shoulders to the Waste downward; indeed if the Defendant had run naked, it might be considered within the Meaning of Sir *Charles Sedley's* Case, but the Defendant only ran stript from the Neck to the Waste. A Rule was made to shew Cause, which was afterwards made absolute,

The same Term.

The King *against* Murrell.

189. **A**N Appointment by two Justices of Appointment
Overseers of the Poor of the Pa- of Overseers
rish of *Utoxeter* was quash'd, because it is quashed, be-
cause not said where they live, or that they were cause not said
to be Inhabi-
tants.

The same Term.

The King *against* Lloyd.

190. **M**R. *Fazakerly* to shew Cause for Exceptions to
the Defendant, who was con- a Conviction]]
victed on Articles against him, and remo- on Articles for
ved from his Office of Clerk of the Peace of Extortion in
the County of *Cardigan*, for taking seve- Fees of Clerk
ral Sums of Money extorsively, as Fees as of the Peace.
Clerk of the Peace.

Exception; They do not set out any E-
vidence on which they ground their Con-
viction; and if this ought to be done on
Conviction, it must be so in this Case; and
the Sessions must adjudge him guilty of Mis-
demeanors before they can convict him; and
this is in the Nature of a Conviction, and
they have always been treated as such by the
Course

Course of the Court, by being put in the Paper as this is, *Whereas* Orders are every Day determined on Motion, and if it be taken as a Conviction, the Evidence must be set out, for if the Court cannot see for what he is convicted, they will not let him be deprived of his Freehold. An Exception that runs through the whole, the Articles are for Matters at the Sessions, and it does not appear a Sessions was held; for it only says he was removed at a Sessions held before his Majesty's Justices of the Peace (*quorum unus*) but does not in any Article shew before whom or at what Time, which ought to be in this Article, though the Style of the Sessions be right in the Caption.

Mr. Serjeant *Draper* on the other Side: All Cases of Conviction are before the Justices met at the Sessions. *Queen against Bary*, 13 *Anne*. The King against *Harrol*, the Statute says, That upon Examination and due Proof, but does not say the Charge shall be in Writing.

2 *R. A.* 298. This Court will not alter the Course of Proceeding of any Court.

This Order is not liable to the Objection of Convictions.

The *Queen* against *Harwell*, 11 *Anne*. The King against *Harland*. The *Queen* against *Baily*, in *Salk. tit. Ufury*. As to the Objection that it does not appear by the
Arti-

Articles of the Charge, that there was any Sessions held at that Time legally; there is no Necessity for it.

Reply; It is in Favour of the Defendant that the Evidence should be set out.

No Difference between a Court of Sessions, if they begin there, and two Justices who have Power to convict; equal as to this Point; it is said the Charge shall be in Writing, but not the Examination; is not the Argument the same in the Case where two Justices convict? no more is mentioned in those Statutes, yet this Court will see the Evidence, and their Authority is the same whether in Sessions or not; no Determination in the King against *Harrell*, and the King against *Harland* was quash'd. No Difference between an Order and Conviction; must set out in both Cases, before whom and when Sessions held, and their Authority. Justices are Conservators of the Peace out of Sessions, and as to taking extorsively, they must make a Case that in its Nature shews it was an Extortion, and that this Money so received was in a Matter in which his Office was concerned, and that must be at Sessions.

Chief Justice: It has been long held in this Court, that in summary Convictions Substance of the Evidence must be set out; their

their Names, and that they did depose.
Easter 13 Anne, the Queen against Brown.
Hill. 12 Anne, the Queen against Green.

The Question is how this differs. Answer is, that this is in a Court of Sessions, and not as two Justices; but Objection to this is, That it is not a Power according to their ordinary Course of Proceeding, and that it has been said that it should be tried by a Jury, but that has been over-ruled; therefore this is a summary Conviction. Another Answer has been, That here is no Penalty to the Informer, and that was the Reason in the Cases cited. But this is not the true Ground, because where the Names of the Witnesses have been set out, and not the Substance of the Evidence, those Convictions have been quash'd. They do not so much as say they have proceeded by Proof upon Oath. I see no great Inconvenience would be, or greater Length of Record, in setting out the material Part of the Evidence; for here they have set out the Articles, and suppose they had said such swore so and so, it had been clear; and to deprive a Man of his Freehold in this summary way seems hard; therefore thought the Evidence should be set out. As to Exception at being at the Sessions, it is said at a General Quarter-Sessions, and that he extorted

Colore

Colore Officii seems sufficient ; but it is proper to be spoke to again.

Mr. Justice *Lee* thought it would be necessary next Argument to lay before the Court in the Case of Orders, what Evidence is ever set out, and what in Cases of Excise; on Appeal to Sessions. In Bastardy it is not necessary where Sessions have an original Jurisdiction.

Sir *Thomas Denison* for the Defendant on the last Argument ; the Objection was, That it did not appear upon what Evidence Sessions convicted Defendant; agreed on provisional Laws; where Power is given to Justices out of Sessions, if Orders returned there, Court will agree they have done Right.

On the other hand, in Case of penal Laws, it must be allowed to me, the Evidence must be set out, and so it has been held in the King against *Theed*, in Conviction, where most of the Cases are cited.

It has been endeavoured to distinguish this from the Cases of Convictions by private Justices; because this was at the Quarter-Sessions, and said that a Court of Record need not set out the Reason of their Judgment.

That this is a Conviction, it being upon Articles; no great Difference between Order at Quarter, General or Special Sessions.

So

So on the Statute of Bastardy, depends on Words of the Statute that this Court will intend Summons; but this is a penal Law, and deprives a Man of his Freehold; this cannot be taken to be a Judgment, because this is a new Method of Proceeding; they don't in this Case proceed as a Court of Quarter-Sessions, because then it must be by Jury.

Where by Jury, there they do not record the Evidence, but otherwise they do so in superior Courts, they give Judgment upon the Evidence as in Dower, 2 R. A. 577. Co. Litt. 6. Abbot of *Strata Marcella's* Case, 9 Co. 30.

1 *And. 20. Rastall's Entries* 228.

In these Cases superior Courts set out the Evidence in the Record, the same Reasons are in Cases of Demurrers upon Evidence. So in Cases of Proof of a Suggestion, Co. Entr. 463. *Rastall's Entr. Cro. Eliz.* 736. The Queen against *Baynes*, 2 Salk. 680, shews the Strictness that was on that Act.

Chief Justice said, That if there was a material Exception taken in that Case, that was not in the Queen against *Baynes*, it deserved to be considered.

Sir *Thomas Dennison*: No Case at Sessions that is like this, the same Reason, if not a greater, is with us, because no Remedy.

Sir John Strange: This is a Proceeding founded upon the *Stat. 1 W. & M.* three Things are required by this Statute, and all observed in this Case.

As to the Objection, that this is in Nature of a Conviction, Summons and Evidence ought to be set out, but this is different.

First, As it is an Order, but not a Conviction. Secondly, That it was at the Quarter-Sessions. Those that have been in *English*, whereas Convictions always in *Latin* till of late.

In Bastardy, Summons not necessary, that always construed an Order, though *contra bonos mores*.

In Orders of Removal, say Party was settled, and not bound to set out, that he had not ten Pounds *per Ann. &c.*

It is further proved by Orders for Wages, which Court intend in Husbandry.

The King against the Inhabitants of *Mitcham*, 7 *Geo. 1.* on Statute to appoint Collectors of Duties on Births and Burials. Objection; Did not appear he was appointed for a Year, but on looking into the Statute Court found Commissioners Power was to appoint for a Year.

Extended to Convictions. The King against *Ford*, *Trin. 9 Geo. 1.* and that it lay on Defendant to shew he had been punished

nished on *Stat. Edw. 6.* So the King against *Theed, Trin. 5 & 6 Geo. 2.* for Obstruction against Exciseman. So in Game Acts, in the Judgment of the Justice not being qualified according to Law is good; otherwise where they are the Words of the Witnesses.

Secondly; This is an Order of Quarter-Sessions who never record Evidence; besides if so, he was the proper Person to take it; it is said it shall be openly in Quarter-Sessions, which must be taken to be Evidence *viva voce*.

There have been but three of these sort of Orders in this Court, since the *Stat. W. & M.* The Queen against *Baynes*. The King against *Forwell*. The King against *Harland*, and all in this manner.

The King against *Hartland* was quash'd on an Exception by Mr. Justice *Eyre*, that not a sufficient Number of Justices appeared to make a Sessions.

If it had been a Jury, Justices might have, on Evidence, allowed what was not legally so.

It is said the Reason is in Bastardy, it is left to the Discretion of the Justices, but Discretion must mean a legal Discretion.

In the Case of Demurrers there is a Necessity to set out, otherwise the Court cannot judge. So in Bills of Exceptions; in
this

this Case no Necessity, because an Order and not a Conviction.

Sir Thomas Denison replied as to its being an Order, because in *English* it is the Nature of the Charge that makes it a Conviction.

As to the matter of an Order of Bastardy, I take that to be a singular Case.

No Offence at Common Law; here it was for Extortion, and might have been tried by a Jury.

The same Term.

The King against Joakam.

191. **M**R. Lacy, to shew Cause why an Information *qui tam* should not be quash'd, insisted that an Information *qui tam* was never quash'd. *Co. Lit.* 139. It is a sort of civil Suit, an Informer *qui tam* may be nonsuit; but it is said here is an Objection that is out of the Record, which is, that a proper Affidavit is not annex'd according to the Statute, *Carth.* 503, 1 *Salk.* 376. the Statute of *James*; but that Act is only directory to the Officer not to file an Information without Affidavit; an Information cannot be quash'd but for a clear Fault in it, which might be fatal on Demurrer, or erroneous on a Writ of Error. *Cro. Car.* 316. 4 *Inst.* 272. 18 *Eliz. c.* 5. Informer pays Costs,

An Information *qui tam* cannot be quash'd.

&c. That the Merits are with us, Statute 21 Jac. c. 3. and the Oath, though not of the Informer, is of the Relator, and so filed in the Affidavit, and the Stress of the Objection is, that it must be on the Oath of the Informer only, and if the Statute shall be taken conjunctively, the Party informing will be under Difficulty, because he cannot be a Witness, if the Offence is only known to one Person. As to the Objection, that the Fact is laid subsequent to the Time of the Sessions, that was over-ruled last Time; if it be taken separately, then the Oath of the Relator will be good.

Mr. *Filmer*: As to the Information not being quash'd upon Motion, this is the only Remedy; no Advantage could be had of this on Demurrer; because out of the Information; the Case in *Salk.* was upon Statute *W. 3.* where the Court may go on without any Recognizance; because the Court has a Jurisdiction, but this is an Offence against 5 & 6 *Edw. 6. c. 14.* and if the Information be not laid in the proper County, it is different, because by this Statute Jurisdiction of this Court is taken away.

Chief Justice: The present Motion is improper, and I do not know any Information moved to be quash'd; and it is said in *Salk. 372.* an Information by Attorney General cannot be quash'd; but if an Infor-

Information could be quash'd, it must be for something that appears on the Record, and not for a Matter extrinſick, therefore no Foundation in the preſent Caſe. A Relator in Law is no more than an Informer was in old Time; if it was irregular, Motion ſhould be to take it off the File.

Agreed, Mr. *Lacy's* Objection of the Fact's being only known to one Perſon.

Mr. Juſtice *Page*: Act is directory; no ſuch till *Stat. W. 3.* as Relator in Law.

Mr. Juſtice *Lee* thought this Rule was a Miſtake, for this is not an Exception that could be taken on the Face of the Record. Rule diſcharged.

The ſame Term.

The King againſt Wright.

192. **U**PON Motion to ſhew Cauſe a-
gainſt an Information for for-
cing one *Wateridge* to a Madhouſe, and
confining him there; the Queſtion was,
Whether the Affidavit of *Wateridge's* Wife
could be read for the Defendant? It was in-
ſiſted by Serjeant *Chappel* and others, for
the Defendants, that *Wateridge* was not an
immediate Party to this Proſecution, or if
he was, yet that the Affidavit of his Wife
might

The Affidavit of the Proſecutor's Wife was admitted to be read for the Defendant, on Motion for an Information.

might be read upon the Motion, though she should not be admitted as a Witness in the Trial; but it was said that she would be a Witness upon the Trial.

Sir *John Strange* on the other Side: Before any Information can be filed, a Recognizance must be entered into by the Prosecutor, and therefore *Wateridge* is consequently concerned in the Event of the Prosecution.

But the Court permitted her Affidavit to be read, leaving the Point undetermined whether she could be a Witness upon the Trial.

The same Term.

The King against White.

Information
in nature of
Quo Warranto,
to try if a
Minor is ca-
pable of being
chosen a Bur-
gess.

193. **T**HE Defendant was a Burgess of *Calne* in *Wiltshire* when he was under Age, and sworn when he was of full Age; and Information in the nature of *Quo Warranto* granted to try whether he was capable of being elected or not. *Co. Litt. Marsh 40. Cro. Car. Young and Fowler.*

The

The same Term.

The King against Bullein.

194. **O**N Motion for an Information in nature of *Quo Warranto*, the Defendant was charged with being chosen Capital Burgeſſ twice, viz. in *July* and *September*, and acted under both; the Defendant disclaimed on the Election in *July*, and ſet up his Right under the Election in *September*, by his Affidavit, and prayed the Information might be filed againſt him as acting in *September* only, or elſe that two Informations might be filed againſt him; But the Court reſuſed.

Information in nature of *Quo Warranto*, againſt Defendant, for being choſen Capital Burgeſſ twice.

The ſame Term.

The King againſt Leder.

195. **M**R. *Marſh* moved for the Proſecutor to quaſh a Preſentment made againſt the Defendant for going about the Town of *Guilford* in a tumultuous manner. Firſt Exception, That there is no Addition; Second, No *Venue*; Third, That going about is ſaid to be in the Night between the third and fourth of *September* laſt,

Preſentment quaſhed for going about in a tumultuous manner, on ſeveral Exceptions.

Sessions Cases adjudged in the

last, and there is no such Time, for it should have been laid on one of those Days; Fourth, It is not said he did go about, but only going. Quash'd.

*The same Term.**The King against Hall.*

Motion in Arrest of Judgment to an Indictment for Perjury.

196. **D**efendant was indicted for Perjury at *Newcastle*, and Mr. Ketleby moved in Arrest of Judgment, and made an Objection to the Awarding the *Venire*, that it was *de Castro Castri novi Castri*, *Carth.* 235. 2 *Show.* 147. 1 *Syd.* 15,

Hilary, seventh of *George the Second*.

The King against Hooper.

Information for a Battery in *Newfoundland* denied, being a local Offence.

197. **M**R. *Hussey* moved for an Information against the Defendant, for a violent Assault and Battery committed in *Newfoundland*.

The Court refused the Motion, the Offence being local, as well in Informations as Indictments, and as to *Newfoundland* being Part of the King's Dominions, it makes no Difference.

Chief

Chief Justice said there was a particular Act of Parliament relating to Offences committed by Governors of Plantations in *W. 3.* which was the only Provision made for an Information for Offences committed abroad, and Plaintiff must bring his Action.

Easter, seventh of George the Second.

The King against The Justices of the Peace of Surry.

198. **A**N Application had been made to this Court last Term, for a *Mandamus* to the Justices of *Surry*, to direct the Clerk of the Peace to make an Assignment of Mrs. *Robinson's* Effects, late a Prisoner, and discharged by Statute 2 *Geo. 2.* to *Richard Medcalf*, one of her Creditors, in Trust for himself and the rest of the Creditors; and a Rule had been made to shew Cause.

A General *Mandamus* to direct an Assignment of a Prisoner's Effects, granted by the Court, who refuse a particular one.

Sir *John Strange* in shewing Cause said, That the Court would not make the Rule absolute for a particular *Mandamus*; agreed that the Court having a superintendant Jurisdiction over inferior Jurisdictions will oblige them by *Mandamus* to execute their Jurisdiction generally, and said he did not oppose a general *Mandamus*.

R 4

Mr.

Mr. Serjeant *Wynne* on the other Side hoped, upon the Circumstances of the Case, the Court would make this Rule absolute for a particular *Mandamus*, and said, That by the Affidavit read in Court, it did appear there were only five Creditors; three of them were actual Prisoners; the fourth, Sir *William Jolliffe*, claimed a very large Debt, as due to him, which was a controvertible Matter, and all, or the greatest Part, of his Debt disputed, and was besides in Possession of Mrs. *Robinson's* Effects, and that *Metcalf* was the only Creditor who stood clear of Objection; that it also appeared four Creditors, viz. all but Sir *William Jolliffe*, had petitioned the Sessions that the Clerk of the Peace might make an Assignment to *Metcalf*, that the Court had, in many Instances, sent particular *Mandamus's*, viz. *Hil. 3 Geo. 1. Mandamus* to Quarter-Sessions, to give Judgment for the Abatement of a Nuisance, *Mich. 5 Geo. 1. Mandamus* to the Court of *Sandwich*, to give Judgment in a Case of Assault and Battery, *Mich. 6 Geo. 1. Mandamus* to Sessions, to receive Appeal, *Trin. 6 Geo. 1. & 2 Geo. 2. Mandamus* to Bailiffs of *Andover*, to give Judgment, *Mandamus* to two Justices, to hear and determine an Information for running of Brandy, *Mich. 9 Geo. 1.*

Baily

Baily against *Burn*, *Mick.* 7 *Geo.* 1. *Mandamus* to Sheriff's Court, to give final Judgment on a Writ of Enquiry return'd, they had refused, as thinking the Damages excessive, and they had a mind to have granted a new Trial.

1 *Vent.* 187, *Mandamus* to Mayor and Aldermen of *London*, to give Judgment upon the 22 *Car.* 2. for appointing Markets after the Fire of *London*, where the Court considered them only as ministerial; and Lord *Suffolk's* Case about two Terms ago, which was a *Mandamus* to the Archbishop's Court, to grant Administration to Lord *Suffolk* of his Father's Estate.

But by the Court the Sessions are Judges of the Circumstances of the Case, and we cannot enter into this without examining all the Requisites of the Act, to see if they have been complied with, and said they would grant a general *Mandamus* to direct an Assignment, but not to any particular Person; and the Rule was varied, and made absolute accordingly.

Note; It appears that all the Cases cited amount to nothing more than a Command of this Court to the inferior Courts, to execute their Authority; and though where the Case itself is circumscribed and ascertained, and the *Mandamus* particularizes the Thing, that does not prove that this Court will

will, in the present Case, determine upon the Merits, for thereby they would take upon themselves an original Jurisdiction to execute this Statute; and in Lord *Suffolk's* Case my Lady *Suffolk* had offered a Renunciation, and she being the Widow, there was no other Person left but Lord *Suffolk*, the Son, that was intitled to Administration, and therefore nothing remaining for the Court below to exercise their Discretion.

The same Term.

The King against Heslopp.

Order of Bastardy quash'd, for directing Security to be given.

199. **M**R. *Filmer* moved to quash an Order of Bastardy, and objected, *First*, It did not appear either of the Justices was of the *Quorum*, which was directed by 18 *Eliz.*

Secondly, That it was not adjudged that the Bastard was born in the Parish. The King against *Godfrey*, *Trin. 10 Geo. 1.*

Thirdly, Security directed to be given; which the Act does not direct.

Sir *John Strange* on the other Side, as to the first Exception, said, That these were Corporation Justices, and not within the Statute.

The

The Court seemed to think no Difference by the Act of Parliament, and made a Rule to shew Cause.

Sir *John Strange* on shewing Cause said, As to the giving Security, he submitted that the Orders should be quashed *quoad* that; as to the second Exception, the Words of the Order do ascertain the Parish.

And as to the third, relating to the Authority being in two Justices, *quorum unus*, did not know of any Case where a Distinction is taken between County or Corporation or Burrough Justices, so as to confine the Statute of *Eliz.* to County Justices, but said that by 3 *Car. 1. cap. 5.* Authority is given to all Justices within their Districts to execute the Statute of *Eliz.* which enlarged the Authority, and cast it upon every Justice of Peace to execute the Law.

Chief Justice thought that 3 *Car. 1.* did no way alter the Jurisdiction, and that struck at the whole Order. By the Court Quash'd.

The same Term.

The King *against* The Inhabitants of Sandridge.

200. SPECIAL Case, a Demise by Indentures from *Thomas Perchin*, of a Cottage

Persons living upon their own, not removable,

whether the
same be Free-
hold or Lease-
hold.

Cottage to *Thomas Gates* the Father, at five Shillings Rent for ninety-nine Years; that the Lessee held it till his Death, and by his Will devised it to the Pauper *Thomas Gates* his Son, upon Condition that the Devisee should pay his Mother twenty Pounds, if she should live to expend it; and it is found that she died soon after the Testator; and that it does not appear that the twenty Pounds were paid; and that it is found that the five Shillings *per Annum* is the full Value of the Premises; and the two Justices held this no Settlement, and the Order of Removal was confirmed at Sessions.

Sir John Strange moved to quash this Order, and objected, That a Term was undoubtedly a Settlement, and was so held in the Case of *Mursly and Grandborough*, *Trin. 4 Geo. 1.* and so it has been in the Case of a Copyhold, *Harrow* against *Edger*, and though the Condition here in the Will be not performed, yet the Son, as Executor, was intitled to the Term, and has a Right to enter on it.

Chief Justice: The Justices are not to judge of the Title, and a Rule was granted to shew Cause, upon which he said the stating the five Shillings to be the full annual Value, seemed to differ this Case, and the Court took Time till next Term to look into

into the Case of *Mursley* against *Grandborough*.

Chief Justice: Where a Man lives upon his own, is a Case of a very tender Nature, and no Difference between Leasehold and Freehold, unless it be under the *Stat. Car. 2.* Persons to be removed under that Act are those that remove from Place to Place, but this Man does not come to settle as a Rambler, but in his own Right, and therefore is well settled.

Court: The Words of the Act of Parliament are general, yet this is not within the Design of the Act, and it is a good Settlement. Order quash'd by the Court.

The same Term.

The King against The Justices of the Town of Salop.

201. **M**R. *Parker* shewed Cause against a *Certiorari* to remove Rates and Orders for the Relief of the Poor of *St. Chad's*, in the said Town, and cited the Queen against the Inhabitants of *Marlborough*, 9 *Anne*; and the King against the Inhabitants of *Utoxeter*, *Easter 5 Geo. 2.*

Sir *John Strange* would have distinguished the present Case from the Cases cited,
I because

Certiorari
to remove
Poor's Rates,
denied.

because here there was a Rate made by the Parish Officers, and confirmed by two Justices, and then an Appeal against that Rate, and the whole Rate quash'd, and a new one made by the Justices in Sessions; and he said that in the present Case the Parishioners had not an Opportunity of being heard against the Rate made at the Sessions, and that ought to be heard in this Court.

Chief Justice: If Persons be charged in the Rate, who are not chargeable, the Rate against them will be void, and they may maintain Trespass if it be levied; but if it be unequal, the Sessions are the only Judges of that, and this Court cannot examine the Equality of the Rates; but if the Justices have proceeded to make a Rate in Sessions, without hearing the Parties, that is Matter of Complaint against them; but the true Objection against a *Certiorari* is, that if Rates were removable, the Poor might be starved whilst the Rates were depending here, and therefore the Court, from the great Inconvenience that would attend the Removal of the Rates, have refused to do it, and no Instance can be produced that such a *Certiorari* ever stood, and the Rule was discharged.

The

The same Term.

The King against Earle and Burstoe.

202. **M**R. *Marsh* excepted to an Appointment of Overseers of *St. John's* under the Castle of *Lewes*; it is said we two of the Justices for the County of *Sussex*; they may be so and not live in the County.

Exceptions to an Appointment of Overseers.

2. That it is not said they lived in or near the Parish.

3. To be new Overseers, which may be a Nullity, for there might be Overseers appointed before.

4. For one whole Year ensuing may be by *Easter* next Year.

Peirce and others against *Brinker*, *Salk*.

474. And a Rule was made to shew Cause.

Anonymus.

203. **M**R. *Ager* Senior, moved, That the Defendant, Parson of the Parish, might produce the Church-Wardens Books of Account in his Hands, upon an Affidavit that it was a publick Parish Book.

Court will not oblige a Parson to produce the Parish Books, but will give Liberty to inspect them and take Copies.

The Court granted a Rule that Plaintiffs should be at Liberty to inspect any publick Books

Books in the Parson's Custody, and take Copies of any Part at their own Expence.

Mich. eighth of George the Second.

The King against Easton.

Exceptions to an Indictment for exercising the Trade of a Grocer, not having served an Apprenticeship.

204. **M**R. *Fate* took Exceptions to an Indictment against Defendant, for exercising the Trade of a Grocer, not having served seven Years Apprentiship.

1. Not said in what County *Daventry* is in.

2. At a General Sessions, and not Quarter, of the Borough.

3. Not averred to be a Trade at the Time of making the Statute, and not one of the Trades mentioned in the Statute. Shew Cause.

Michaelmas, seventh of King George the Second.

Oakhampton against Newton.

Paying Parish Dues gains a Settlement.

205. **A** Man is charged and assessed by Parish Officers to the Land Tax, and pays it for two Years, which was repaid him by his superior Officer, he being a Tide-Waiter, the Sessions adjudge this no Settlement.

Serjeant

Serjeant *Chappel* moved to quash their Order, and said that this amounted to Notice, and that the Party gained a Settlement, *Comb.* 410, 279. *1 Mod.* 331, and Scavengers only are excepted in the *Stat.* 9 *Geo.* 1. Shew Cause.

Hilary Term following.

The King against Griffin.

206. **S**OME Differences have arose between the Trustees of the Workhouse, in the Parish of *Lambeth*, and some of the Parishioners there.

13th of *August* 1732; the following Notice was given in Writing, and read in the Church, *viz.*

Whereas the Church-Wardens and Overseers of the Poor, and the Parishioners, have usually met at the Workhouse every *Sunday* in the Afternoon, this is to give Notice that for the future the said Meetings will be every *Thursday* at four of the Clock in the Afternoon.

<i>William Starkey,</i>	}	Church-Wardens.
<i>Thomas Griffin,</i>		
<i>Simon Harding,</i>	}	Overseers.
<i>William Banyer,</i>		
<i>Robert Kettle,</i>		

Note; The first Notice was not in Question.

Information
against
Church-War-
dens for pub-
lishing a Libel
in the Church,
reflecting up-
on the Cha-
racters of the
Trustees of
the Parish-
Workhouse.

20th *August* 1732. Another Notice in Writing, reciting the former, was given by the Trustees and read in the Church, that the Parishioners were desired to take Notice that the same was ordered without the Authority or Knowledge of the Trustees appointed by Order of Vestry, for governing and managing the Work-House, who will continue to meet as usual on *Sunday* in the Afternoon.

27th of *August* 1732, the above Persons who signed the first Notice reciting the Notice given by the Trustees, go on as follows; which Notice in Writing was read in the Church, *viz.* Now this is further to inform the Parishioners, that such Notice was only consented to by one Church-Warden, whereas two Church-Wardens and three Overseers ordered such Meeting on every *Thursday*, which they intend to continue, notwithstanding such pretended Authority to contradict, and strictly to adhere thereto, and desire the Parishioners to meet and assist them, in order to correct several Abuses that have, by their pretended Authority, been suffered to be committed, and which will appear plain when any one pleases to examine into the same, which hath been done by the said Church-Wardens, and the Parishioners assisting them in correcting such Abuses. Signed *T. Griffin.*
Upon

Upon the last of these Notices an Information was moved for, and granted against the Defendants *Banyer* and *Griffin*, who were found Guilty.

And it was now moved in Arrest of Judgment, that this Notice contained nothing libellous; and Serjeant *Eyre* said, That the Charge was laid too general and uncertain against the Defendants, as intending to reflect upon three Persons particularly named, and the rest of the Trustees; and if it be an Offence done against the Characters of all these Trustees, every one may move for a separate Information, and the Defendant be punished for the same Thing over and over; and it has been held that the Persons ought to be named, and the Offences must not be accumulated, but a single Offence ought to be laid and made certain, and cited *Bro. Abr. tit. Indict. pl. 21. Carth. 226. and Show. 389, 390.*

Mr. Serjeant *Wynne* on the same Side cited the King against *Jelfs*, and 2 *Leon. 2 Lev. 208.* as to the Uncertainty, and *Allen 28.* that it is not sufficient to shew a Person in Office, but how he came to be elected;

And said, that a Parish has no Authority to appoint Trustees. *Lane 21.*

The *Stat. 9 Geo. 1.* is the only one in Being that gives Authority to erect Work-houses; and it does not appear that this

Workhouse was erected by the Assent of the Parish; they ought to have shewn that they were Church-Wardens or Overseers, and that this was done by the major Part of the Parishioners, and that the Poor therein were such as did seek Relief.

Mr. Serjeant *Hayward* on the same Side; they should have said that they were Trustees appointed by Order of Vestry, whereas it is only said that they were chosen by the Parishioners.

Sir *Thomas Abney*, in support of the Judgment, cited the King against *Osborn*, which was an Information for a Libel against the whole Body of the *Jews*.

A Parishioner as such cannot give any Notice in the Church in Time of Divine Service.

There are other Statutes for Work-houses besides the 9 *Geo. 1.* particularly 39 *Eliz. c. 5.*

Mr. *Kettleby*: A Libel is never the less so because it is true.

Mr. *Marsh*: Parishioners cannot give their Consent but in Vestry.

Mr. *Fazakerly* on the same Side: Scandalous Words in an Information are not to be measured as in an Action for Words; the Question is, Whether this Libel does reflect upon any Person's private Character? It being reduced into Writing that the
I Trustees

Trustees have been guilty of a Breach of Trust, is a Scandal upon them, abstracted from the Statute 9 *Geo. 1.* for that does not alter the Nature of Things.

As to the Objection, that it appears by the Trustees Notice, to which the last refers, that they were appointed by a Vestry; in the beginning of the Information it is said, they were chosen by the Parishioners, it is only a Mistake in the Notice, and no way inconsistent.

Sir John Strange : Formerly in Actions for Words Courts took them in a milder Sense; but that Rule is now exploded, and they construe them as other Persons in common Understanding would.

As to the Objection, that it does not appear that the Persons are the same; Taking the whole together it does.

Mr. Serjeant Wynne replied, This was a joint Trust, if any, and different from the Case of a Corporation, or of the Body of the *Jews* or *Quakers*, because they could not be particularly specified.

A Vestry must be upon publick Notice.

Chief Justice : As to the first Question, Whether the Matter of the Paper be libellous or not? that depends upon the Paper itself; as to the Matter of the Paper, it appears to me to be libellous; the Court cannot take these to be publick Trustees, nei-

ther is it averred to be a Work-house upon the Statute 9 Geo. 1. but must be erected by a private Charity and Consent; therefore the Question is, Whether the Publication of a Paper which reflects on a Person as a private Person, and in a private Capacity, is not a Libel? and I think it is; because it tends to a Breach of the Peace; even though an Action would not lye for the Words.

In my Apprehension, saying that they have suffered those Abuses to be committed by Virtue of their Authority; when considered, those Words are a Charge; to take off the Force of them it is said the Defendants were Church-Wardens, and proper to do this; but it does not appear they were so; yet still if it had, they ought to keep within due Bounds in their Notice, and not reflect; this was a proper Defence at the Trial. Upon these Reasons Court was of Opinion here was sufficient Matter to make this a Libel.

The next Objection was, that the Persons are not all mentioned, but only three, and the rest of the Trustees; there is no Case that goes so far as to say that all should be mentioned; three are; and that is enough; for it is the Suit of the King and one intire Offence.

As to the Objection, that it does not appear the Parishioners had any Authority to choose them, that is not material; because it is a private Charity.

As to the last Objection, the Notice was concerning these very Persons, and there is no Inconsistency in this.

And the whole Court agreed, and gave Judgment for the King.

Trinity, ninth of King George.

The King against Gibbs.

207. **T**HE Defendant was indicted for selling Beer, and the Indictment set forth, that he sold several Quantities of Beer to divers Persons by false Measure; and it was moved to be quash'd for the Uncertainty of it, and said, The Court cannot give Judgment in this Case, for they must ascertain and proportion their Judgment in adapting the Punishment suitable to the greater or less Quantity that is sold; and in as much as the Quantity is not ascertained, which may direct the Punishment, the Indictment is erroneous, and should be quash'd; for how is it possible in the Nature of the Thing to make a Defence under so general a Charge? in *Cro.*

Indictment
quash'd for
Uncertainty.

Car. 381. a Man was indicted for engrossing a great Quantity of Hay and Straw, and adjudged wrong for the Uncertainty of it.

By the Court: Judgment must be arrested, because the Charge is too general for the Court to inflict the Punishment by; which should be proportion'd to the Crime.

The same Term.

The King against Ford.

Exception to a Conviction for selling Ale without Licence, because it did not appear the Party was not licensed, but over-ruled.

208. **T**WO Convictions against Defendant on the *Stat.* 3 *Car.* 1. c. 3 & 4. for selling Ale without a Licence, and being removed by *Certiorari*, Mr. *Fortescue* took three Exceptions.

1. It does not appear, on the Face of the Conviction, that the Party was not licensed; there are two Sorts of Justices of the Peace, viz. Justices of the Peace only; and Justices of the Peace, and of *Oyer* and *Terminer*. Now the Conviction recites, That the Defendant was not licensed by the Justices of Peace; then if the express Words of *Oyer* and *Terminer* are not in their Commission, they are no other than simple Justices of the Peace. *Hale's Pl. Cor.* 165. *Crompt. Just.* 161. b. §. 5. To this the Chief Justice answered;

answered; If no other Matter had appeared but that he had *no Licence* from two Justices of the Peace, and of Oyer and Terminer, the Objection would be of some Weight; but there is a positive Allegation, that he sold Ale (without any Licence whatsoever).

2. It is not set forth that the Defendant was not convicted upon the Statute 5 & 6 Ed. 6. c. 25. And if he was, the Stat. 3 Car. 1. is exprefs, that he shall not be convicted on that Statute, viz. 3 Car. therefore such Matter ought to be set forth in the Conviction.

Chief Justice: We cannot intend any former Conviction; for if the Case had been so, the Defendant should have informed the Justices that he had been convicted already; which was a Circumstance which lay in his own Knowledge, and having averred it against the Statute of Car. 1. the Act of Ed. 6. is quite out of the Case.

3. The second Conviction recites the first, as that on which it is grounded. The first Conviction runs in the Present Tense, and the Recital of the first in the second Conviction is in the Preterperfect Tense. Now the first Record ought to be set forth *literatim*, and in civil Actions the constant Course is to recite the Record in the very Words.

Chief

Chief Justice : The Recital in the Preterperfect Tense is well enough, as well in this Case as in Civil Actions, and over-ruled the Exceptions.

Mich. eleventh of George.

The King against Hawkins.

Exceptions to
an Order of
Sessions to
suppress an
Alehouse, be-
cause not said
in the Body
of the Order
in what Coun-
ty the Ale-
house was ;
held a fatal
Exception.

209. **A**N Order of Sessions to suppress an Alehouse kept by the Defendant *Hawkins* ; two Exceptions taken to the Order.

1. Not said in the Order that this was a Common Alehouse, but only a lewd and disorderly Alehouse ; and the Words of the *Stat. 7 Ja. 1.* speak only of Common Alehouses. The Court over-ruled this Exception.

2. Not said in the Body of the Order in what County the Alehouse was ; the County was mentioned in the Margin ; but it was insisted that was not sufficient ; for it ought to be mentioned in the Body to shew the Justices have a Jurisdiction.

By the Court : This is a good Exception, and the Order must be quashed ; it is a Common Exception, and always allowed ; and the same Exception has been allowed in Orders for removing the Poor ; so held in

in the Case of the King against the Inhabitants of *Worthenbury* in *Wilts*, *Hil.* 10 *George*, in the King's Bench, which was an Order for Settlement of the Poor, 2 *Keb.* 302. the King against *Yarrington*, 303. the King against *Butler*.

Easter, eleventh of *George*.

The King against Venables.

210. **D**efendant was convicted on 5 & 6 *Ed.* 6. c. 4. for keeping a disorderly Alehouse, and upon his Conviction the Justices made an Order for suppressing his Licence; yet notwithstanding this Conviction and the Order, Defendant went on in the Sale of Ale. Upon this the Justices made an Order for his Commitment to the County Gaol, and ordered him to give Security that he would not sell Ale for the Time to come. The Conviction and Order being removed into the King's Bench, Mr. *Reeve* took Exception to the Order of Commitment, because it did not appear by the Conviction and Commitment that the Defendant was summoned before the Justices, and it is possible he might have gained another Licence after the first was suppressed; therefore it should have appeared in the Order

Exception to a Conviction for not setting forth therein the Summons, and held not necessary.

Allen 78.

Order he was summoned to answer for himself; he admitted it did not appear by the Commitment he was not summoned; but that is not sufficient, as was resolved in the Case of the Queen against *Dyer*, *Salk.* 181. for it was there held, that in these summary Proceedings a Summons was necessary; and it ought to appear there was a sufficient Summons; and in that Case the Summons being laid to be upon an impossible Day, it was held as no Summons, and the Conviction was quash'd. So in the Case of the Queen against *Green*, *Hil.* 12 *Anne*, the Conviction was quash'd for want of setting out the Summons in a particular Manner; and there it was carried so far that the general Allegation of *being duly summoned* was held not sufficient. See Doctor *Bently's* Case relating to the Summons, *Hil.* 9 *George*.

6 Mod. 40.

Mr. Serjeant *Carter* on the other Side: This Conviction is right, for the Justices having a Jurisdiction by Act of Parliament, the Court will never intend they have exceeded their Jurisdiction, or acted irregularly, unless it appear to the Court upon the Face of the Conviction. The Case of the Queen against *Dyer*, *Salk.* 181, is very different from this, for that Conviction recited that Defendant had been summoned to appear upon *Tuesday* 17th of *April* 1702, whereas

whereas there was no such Day, for the 17th of that Month in that Year was a *Friday*; so that it appeared on the Face of the Conviction that the Time of the Summons was impossible, and therefore they could not intend a Summons at any other Time. He cited the King against *Whitlock* 1719. The King against *Hawkins*, 1720. The King against *Cleg*, *Mich.* 1721. The King against *Harris*, *Mich.* 1722. In these Cases the same Exception was taken, and over-ruled; and in the Case of *Quinges* against *King*, it was held not necessary to set out a Summons, for the Court will intend one, and the general Allegation of having *proceeded duly* is sufficient. In 1 *Vent.* 175, Exception to the Discharge of an Apprentice was, that it did not appear there was Notice; but that Point was waved; for being in a judicial Proceeding, it shall be intended.

Lord Chief Justice *Raymond*: This Conviction is well taken; where no Summons at all is set forth in these Convictions, the Court will intend one; but where a Summons is set out, and that Summons appears to be irregular, then there is no Room for the Court to intend any other Summons; as it was in the Case of the Queen against *Dyer*. There can be no Inconvenience in this; for if in Fact the Justices have proceeded

ceeded without summoning the Party; the Court will give the Party a Remedy by Information.

Mr. Justice *Fortescue*: The Question is only on the Form of the Order; I have often known this Objection made; but it never prevail'd, for where the Justices have a Jurisdiction, all necessary Incidents will be presumed to support that Authority, unless the contrary appears. I think the Conviction good without Dispute.

Mr. Justice *Powis* agreed.

Mr. Justice *Reynolds*: The Question is, Whether a Summons is necessary or not? undoubtedly it is; but the only Doubt is, Whether it should appear, upon the Conviction, that there was a Summons? thought it a settled Point, that it is not necessary it should appear, and agreed the Conviction to be good. Where a defective Summons appears, it destroys the Intendment that there was a regular Summons; which is like the Case of an Original; where the Statute of *Jeofails* supplies the want of one; but does not help a defective Original.

Mich.

Mich. twelfth of George.

Anonymus.

211. **H**ELD that where an Appeal is lodged before the Sessions, and there be no Proceeding upon it; and the Sessions is not adjourned; the Appeal is entirely lost; and the Court of King's Bench cannot grant a *Mandamus* to the Justices of Sessions to proceed thereon.

Easter, first of George the Second.

The King against Cawood.

212. **T**WO Justices make an Order to remove a Person out of the Liberty of *Cawood* to the Liberty of *St. Peter*, both within the West-Riding of *Yorkshire*; an Appeal was made from this Order; and being removed by *Certiorari*, an Exception was taken that the Appeal from this Order was to the Quarter-Sessions of the Riding; when it ought to be to the Sessions of the Liberty.

Exception that an Appeal from an Order in *Yorkshire* was made at the Quarter-Sessions of the Riding, when it ought to be to the Sessions of the Liberty; but held well.

Mr. Reeve on the other Side: The Statute 8 & 9 W. 3. ca. 3. §. 6. has altered the

the Law in this Point, and directed the Appeal shall be made to the Justices of the Riding in these Words, " The Appeal against an Order for the Removal of any Poor Person from out of any Parish, Township or Place, shall be had, prosecuted and determined at the General or Quarter-Sessions of the Peace for the County, Division or Riding, wherein the Parish, Township or Place (from whence such poor Person shall be removed) doth lie, and not elsewhere." And upon a Rule to shew Cause, the Court held the Appeal may be made only to the Sessions of the Riding.

Second Exception; In the Caption it is said, Be it remembered that at the General Quarter-Sessions of the Peace held as by Adjournment. Now it is not sufficient to set down the Sessions were held such a Day by Adjournment, unless shewn when the Sessions legally commenced. But this Exception was not allowed, and therefore the Appeal confirmed.

Mich. thirteenth of George.

The King against Tennant.

Order in Bastardy discharged at the Sessions on Appeal, is conclusive.

213. **M**OVED to quash an Order of Bastardy made by two Justices,
to

to charge the Defendant with keeping a Bastard Child, begotten on the Body of a Feme Covert, during the Absence of her Husband, upon Evidence of a Certificate of a Captain in the Army, that the Husband was at that Time in *Ireland*, and the concurring Evidence of the Woman's Confession that the Defendant was the Father of the Bastard. The Case was this; Defendant appealed from this Order to the Sessions, and upon Debate the Sessions set *Salk. 122.* aside the Order of two Justices, and notwithstanding that, the same two Justices made a second Order upon the very Grounds of the first, which had been discharged before by the Sessions. It was insisted that this last Order was void, for according to the Case in *Vent. 59.* if an Order of two Justices, for keeping a Bastard, be revoked by Appeal at the Sessions, that the Person is absolutely discharg'd; and the Justices had no Authority to make a new Order.

Mr. *Fazakerly* in answer said, If Sessions discharg'd an Order for Form, a new one might be made; and *this Court* would intend that the Sessions had discharg'd it for Form; for it appears ill founded and to want Form.

Court: Nothing of that kind can be intended, for the Order of Sessions recites, that the Order was made on full Hearing, *2 Bulst. 356.*

and therefore the Merits must have been before them, and the Discharge of the Sessions upon Appeal is conclusive against all the World; and the Defendant being in Court was discharged.

Easter, second of *George* the Second.

The King *against* The Inhabitants of
Turley.

Order of Sessions held good, though the Appeal was not made to the next General Quarter-Sessions, on Presumption that Notice of the Order might not be given before the next Sessions.

214. **M**OVED to quash an Order of Sessions, upon this Exception, because the Order of Removal made by two Justices was made the 21st *June*, and the Appeal was not made to the next General Quarter-Sessions, which was at *Midsummer* following the Date of the Order, as required by the 43d *Eliz.* But was deferr'd to *Michaelmas* Sessions. *Salk.* 480, 482. *Carth.* 455.

Mr. *Parker* in Answer quoted the Case of the Parish of *Milbrook*, against *St. John's Northampton*, *Mich. 1 George*, an Order of two Justices was made before the Sessions at *Easter*, and the Appeal from that Order not till *Midsummer* Sessions; yet held a good Appeal; because Notice of the Order might not be given before the next Sessions.

Chief

Chief Justice: How can we know Notice was not given till after the Sessions next ensuing the making of the first Order?

Mr. Parker answered; They should have objected the want of Notice at the Sessions when the Appeal was made, and then it would appear specially stated on the Order. The Court affirmed the Order of Sessions. See *Brown's Case* in *Com.* 448.

Trinity ninth of George the First.

St. Olave's Southwark against Allhallows.

215. *A.* Bound Apprentice in one Parish, and by Agreement served in another, and by an Order of Justices of Peace, his Settlement was adjudged to be in the last Parish. This Order was removed, and moved to quash, for these Reasons:

A. Bound in one Parish, by Agreement serves in another, gains a Settlement in the last Place.

First, the *Stat. 3 & 4 W. & M. c. 11.* restrains the Privilege of gaining a Settlement to the being actually bound an Apprentice, and in the last Parish there was no Binding, consequently no Settlement could be gained there. By a bare Agreement the Apprentice could not be turned over, so as to gain a Settlement in the last Parish; for by the Custom of *London*, the

Turning over must be before the Chamberlain of *London*, or otherwise not binding, and the bare verbal Agreement between the Master and Apprentice, is not sufficient within the Statute 2 *Salk.* 479. and the Act must intend a Service with the Person only to whom the Apprentice was bound.

By the Court: The Settlement in the latter Place is good; if a Master assigns over his Apprentice, and the Apprentice serves in pursuance of that Assignment, he thereby gains a Settlement; and the Apprentice in the present Case, whilst he is with his second Master, is in Effect serving the first; for he serves in pursuance of the first Contract, and it is a Continuance of his Apprenticeship.

Mr. Justice *Eyre*: An Apprentice's Settlement is where the Apprenticeship expires; and it differs not whether he serves with one Master or another, for still he serves by Virtue of the first Indenture.

Mr. Justice *Fortescue*: The Settlement in the latter Place is well gained, not as an Apprentice, but as a Servant to the second Master.

The same Term.

The King *against* Reed.

216. **T**HE Defendant was indicted at the Quarter-Sessions, upon the Statute of the 12th of Queen *Anne* for Usury; and it was moved that this Indictment might be quashed; because this was an Offence of which the Justices of the Peace had not a Jurisdiction; and to this Purpose was cited the Case of the Queen *against Smith, Salk. 680.* and the Indictment was quashed by the Court, Indictment for Usury, Quash'd.

Trin. sixteenth of *George* the Second,

The King *against* Wood.

217. **I**NDICTMENT against the Defendant, a Miller, for changing Corn delivered to him to be ground, and giving bad Corn instead of it. It was moved to quash it, because only a private Cheat, and not of a publick Nature. It was answered, That being a Cheat in the way of Trade, it concerned the Publick, and therefore was indictable. Indictment for changing Corn and giving bad instead of it, held indictable.

The King against *Marsh*, 2 *Keb. Trinity*,
21st of King *Charles*.

But the Court unanimously agreed not
to quash the Indictment.

Easter, tenth of *George* the First.

The King against *Puckington*.

Apprentice
hiring himself
to Service
during his
Apprentice-
ship, gains no
Settlement
thereby.

218. *A.* Was bound Apprentice and served
as such two Years; his Master af-
terwards becoming Bankrupt, he hired him-
self as a Servant to another, during that Ap-
prenticeship, and lived with his second Ma-
ster till his Apprenticeship expired, and then
his first Master gave him up his Indenture;
and the Question was, Whether *A.* gain'd
a Settlement in the Parish where he lived
with his second Master; or whether his
Right of Settlement continued in the Parish
where he lived as an Apprentice with his
first Master. And it was ruled by the
Court, that *A.* being under an Indenture of
Apprenticeship, and having gained a Settle-
ment by that, cannot gain another Settle-
ment by hiring himself to another whilst
the first Covenant subsists; for he was not
sui Juris when he made the second Con-
tract.

Hil-

Hilary, tenth of George the First.

Anonymus.

219. *A.* Was bound an Apprentice to a Apprentice
Cooper for seven Years; but for lodged with
the Space of six Years of his Apprentice- his Father
ship he lived with his Father at a small the former
Distance from the Habitation of his Master. Part of his
The Order of Removal sets forth, that he Time, and
came to live with his said Master in the se- for the last
venth Year, and continued to stay with three Quar-
his said Master for three Quarters of a Year ters of a Year
together; and the Question was; with his Ma-
ster.

If *A.* was settled at the Place where his Master lived or not?

By the Court: This is a good Settlement at the Master's Place of Abode; and the Law will intend he continued without Intermission all the Time where his Master inhabited; and the Order of Justices which removed him to the Place of his Father's Settlement was quash'd.

Trin. sixteenth of *George* the Second.

Rhode in *Somerfetshire* against North
Bradley in *Wiltshire*.

Order confirmed at the
Sessions without any Ap-
peal, not good.

220. ORDER of two Justices made the 20th of *November*, which was confirmed by the Justices at *Christmas* Sessions, without any Appeal, upon Application of that Parish which obtained it. At *Easter* Sessions, upon Appeal, they quash the Order of Confirmation, and also the Order of two Justices.

Objection; That a Sessions intervening between the Order of Appeal and the making the original Order, they ought to have shewn in their Order, that there was no Notice of the Order of two Justices before *Christmas* Sessions; for if there was Notice, the Sessions at *Easter* had no Jurisdiction.

The Court held that they need not set out no Notice, and cited *Milbrook* against *St. John's* in *Michaelmas* Term, in the first Year of King *George* the first.

It was agreed that the Order of Confirmation was void for want of Appeal; but then the Question was, Whether the Justices at *Easter* Sessions had any Jurisdiction

tion over that Order, or whether it ought not to have been quashed in this Court?

As they might have Jurisdiction, because if not served till after *Christmas* Sessions, it will be good, we will not intend Notice against their Jurisdiction.

Chief Justice cited *Comb.* 448, in Support of the Objection, that Notice of the Order of two Justices should appear in the Sessions Order; but the Case of *St. John* against *Milbrook* is contrary, and so was adjudged in the Case of the King against the Inhabitants of *Turley*, *Easter* Term, in the second of his present Majesty.

If Appeal was not at the next Sessions, that should be taken Advantage of at the Sessions, and it need not appear in the Order of Sessions. It was further said, That the Order of Confirmation ought to have been set aside before the Appeal; but we think not, because the Parties to the Appeal are no Parties to that Order, and perhaps had no Notice of it; and therefore the Appeal proper for that Order, as to the Appellant, void. Order of Sessions confirmed as to that Part quashing the Order of two Justices, but not as to that Part quashing the Order of Confirmation; and as to that being now before the Court, we will quash it, as being made without Jurisdiction,

jurisdiction, there being no Appeal against that Order.

Trinity, twelfth and thirteenth of George the First.

The King against Davys.

Order to discharge Apprentices in Cities and Boroughs must appear to be made by the Mayor.

221. **M**R. Reeve moved to quash an Order of Sessions made at the Sessions at *Bristol*, for the discharging an Apprentice from his Master. The Order set forth, that upon the Complaint of one *Fide*, of the Hardships and ill Usage he received from his Master, the Court had examined into the Causes and Grounds of this Complaint, summoned the Master, and had heard him in his Defence; and that it appeared to them the Master had beat his Servant very much without just Cause, and turned him out of Doors, therefore they order the Master *shall return 20 l. Part* of the Money he received with his Apprentice, and the Apprentice be discharged from the Service of his said Master.

Restitution and Discharge by Justices good. Salk. 67.

Exception was taken to this Order; That it did not appear by the Order there was any Reason for his being discharged; for the only Reason given in the Order was, That the Apprentice having made a Complaint

plaint against his Master for ill Usage, the Master declared in open Court he would not take him again into his Service. It was agreed by the Court, that the Cause of Discharge *ought to appear in the Order*, that this Court might judge whether it was sufficient Cause or not.

And Mr. Justice *Fortescue* said, That the Justices, in Cases of this kind, are obliged to shew a sufficient Cause and Reason for the Discharge they make, and said he remembered a Case where an Order was made to discharge an Apprentice because he had the *King's Evil*; and this was held to be no sufficient Cause for his Discharge; because it was the Act of God. By 5 *Eliz. ch. 4.* it is enacted, that a Discharge of an Apprentice must be under the Hands and Seals of four Justices of the Peace, (*Quorum unus*) but here none of the Justices appear to be of the *Quorum*.

But by the Court it appears there were but five Justices at the Sessions, and unless two were of the *Quorum* they could not hold a Sessions. The Counsel replied, That an Order could not be made good by *Implication*. It was argued in Support of the Order, that that Statute gives *Mayors* of Cities and Boroughs a Power to discharge Apprentices; but does not require them to be of the *Quorum*. But it was answered,

That

That this Order appeared not to be made by the *Mayor*, but made at the Sessions.

By the Court: Quash the Order, and agreed it to be a Point not now to be disputed, that the Sessions has an Original Jurisdiction to discharge Apprentices. *Salk.* 67, 68, 491.

Michaelmas, first of *George* the Second.

Smith against Birch.

An Infant
Apprentice
must be bound
by Indenture.

222. **A**N ACTION was brought against the Defendant for enticing away and detaining the Plaintiff's Apprentice, who had agreed by Writing to serve the Plaintiff for seven Years. Upon Evidence it appeared, that the Stile of the Writing began, *This Indenture*, &c. But in Fact the Parchment was not indented, but was a Deed Poll.

Cro. Eliz.

472.

5 Co. 15. b.

5 Co. 20.

Stile 60.

Mr. Serjeant *Corbet* took an Exception to the Deed, and insisted that the young Man was not an Apprentice, because he was not bound by Indenture. An Infant can be bound no other way than as the Statute directs, 5 *Eliz. ch. 4.* which directs *the Binding to be by Indenture*, and nothing can make this good. The Deed cannot now be indented, for that would be a Forgery; and by making it so it might be an Estoppel; therefore

Cro. Jac. 494

Winch 25.

Salk. 68. pl. 7.

Inst. 229.

therefore unless the Plaintiff shews the Apprentice to be of full Age at the Time of signing such Deed, he cannot be accounted his Apprentice; and by Consequence no Action can lye against the Defendant for detaining the Apprentice, neither can the Plaintiff prove him to be his Servant by this Deed. For he has declar'd for an Apprentice, and must prove him so to be, therefore the Plaintiff was nonsuited.

Michaelmas, twelfth of George.

The King against Collingbourn.

223. ORDER made at *Hicks's Hall* Apprentice to a Freeman of *London* discharged at *Hicks's Hall* from his Master, who lived in *Middlesex*, and held good.
 for discharging an Apprentice to a Freeman of the City of *London*, the Master living in *Middlesex* where the Apprentice was bound. The Order being removed into this Court by *Certiorari*, three Exceptions were taken.

1. That the Apprentice was bound and inroll'd in *London*.

2. He was bound by the Justices.

3. The Trade of a Glazier not within the Statute.

To these Exceptions it was answered, That the Clause of 5 *Eliz. ch. 4. §. 35.* enacts, That if any Master should misuse

his Apprentice, and he repair unto one Justice of the Peace for the County in which the Master resides, &c. and §. 40. provides that the Customs of *London* and *Norwich* should be saved; §. 35. has ever received a large Construction in favour of the Jurisdiction of Justices; for though upon the Master's Complaint no Power is given to the Justices to discharge; yet in 1 *Saund.* 314. *Hawksworth* against *Hillary*, held that it is reasonable, and within the Intent of the Statute, that an Apprentice should be discharged from an ill Master, as well as a Master discharg'd of a wicked Apprentice. The same Point is resolved in 1 *Mod.* 315. *Wilkin* against *Edwards*, and 1 *Vent.* 174, *Watkins* against *Edwards*.

The first and principal Question is, Whether the Court at *Hicks's Hall* has any Jurisdiction to discharge an Apprentice bound to a Freeman of *London*, or whether he is not to be discharg'd by the Customary Petition in the Mayor's Court? It is found that the Apprentice lived with his Master out of the City of *London*, and within the Jurisdiction of the Justices of *Middlesex*. To this Exception it was answer'd, That the Statute does not regard where the Binding is, or Inrolling, but expressly gives the Jurisdiction to the Justices of Peace where the Master lives; and if this did not belong

long to the Justices of *Middlesex* where the Master lives, there would be a Failure of Justice, for neither the Chamberlain, nor any other City Magistrate, has a Power to compel the Master's Appearance before them.

2. As to the second Exception; It was said that it was not material at what Place the Apprentice was bound, for the same Reason.

3. To the third Exception it was said, That formerly indeed it was a Doubt whether the Statute did extend to all Trades; but of late it had been settled and agreed that it does, in *Salk.* 471. The Court there upon second Thoughts resolved, That the Power of discharging reaches only to the Trades mentioned in the Statute, *Palm.* 528. though *Hale* C. J. was of Opinion the Statute extended to all Trades, 2 *Keb.* 822. The King against *Taunton*, *Hil.* 6. *Geo.* the Court affirmed the Order of Discharge, and said they would not take away the Jurisdiction of the Mayor's Court, but only give a concurrent Jurisdiction to the Justices of the County. It would be very inconvenient to have Apprentices to Freemen of *London*, who are bound there, and who live in distant Counties perhaps, obliged to come to the Mayor's Court to sue a Discharge against the Master. The Words of the Statute

Statute are very plain, for they give the Jurisdiction to the Justices where the Apprentice lives.

Trinity, twelfth of George.

Ruardean against Whitechurch.

Order setting forth that the Pauper was bound Apprentice sufficient; without saying by Indenture.

224. **O**NE *Charles Knight* was bound an Apprentice to a Gentleman for seven Years, and served him three Quarters of a Year as his Huntsman, and wore a Livery; after which he ran away from his said Service, and gained no Settlement since; and it was adjudged that he was settled at the Place where he was so bound an Apprentice.

N. B. The Sessions had adjudged that he had gained no Settlement by his Service; and set forth in their Order, that no Indenture was produced of his being an Apprentice, upon which they chiefly grounded their Judgment. But the Court held, that if an Order set forth that such a one was bound an Apprentice, it is sufficient without saying he was bound by Indenture; though the Statute says positively that it shall be by Indenture.

Mich.

Mich. thirteenth of George.

The King against Smith.

225. **M**R. Fazakerly moved to quash an Indictment for taking an Apprentice for a less Term than seven Years, upon two Exceptions.

1. Not appear in the Indictment that the Defendant exercised any Trade, Occupation or manual Employment.

2. Not set forth that the Apprentice was not the Son of a Farmer.

Rule to shew Cause, and the last Day of Term, Indictment was quashed by Consent.

The same Term.

The King against Wately.

226. **T**HE Justices in Sessions made two Orders on the Master, one to discharge the Apprentice bound to the Trade of a Cutler, and the other to compel the Master to repay Part of the Money received with the Apprentice to his Father; these Orders being removed into the King's Statute.

Bench by *Certiorari*, and Mr. Serjeant

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Chappel

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Chappel moved to quash them upon this Exception; because in the first Order the Trade of a Cutler is mentioned to be the Trade of the Master, and that is not one of the Trades enumerated in the Statute 5 *Eliz. ch. 4.* and therefore the Sessions had no Jurisdiction to intermeddle in the Affair, and cited *Salk. 471, 3 Salk. 41. Puntin's Case*, who was bound to a Tallow-Chandler, and by Order was discharg'd from his Apprenticeship. Rule to shew Cause.

Anonymus.

Apprentice
for seven
Years to one
not intitled to
the Trade;
held a good
Service.

See the Queen
against Mad-
dox, *Salk.*
613. for an
Exposition of
the 5th *Eliz.*
c. 4.

227. *A.* Was put Apprentice to *B.* to serve him for seven Years (*B.* not having himself served legally to that Trade); afterwards *A.* being out of his Time used the same Trade, and an Action on the Statute being brought against him for not serving his Time with one that had legally served seven Years;

Resolved, it was a good Service in *A.* and that he shall not be liable to any Suit or Trouble thereupon.

Easter,

Easter, second of George the Second.

Aynsworth against Wood.

Before Lord Raymond at Guildhall.

228. **T**HE Plaintiff brought a special Action for detaining Plaintiff's Apprentice; and he declared that *A. B.* being bound an Apprentice to the Plaintiff to serve for seven Years, departed from his Service, and that Defendant knowing him to be the Plaintiff's Apprentice, retained him in his Service, and absolutely refused to deliver back the Apprentice; and from such a Day to the Day of filing the Original, the said Defendant kept and detained the said *A. B.* in his Service, to his Damage one hundred Pounds. To support this Declaration, the Indenture of Apprenticeship was given in Evidence, that the Boy served two Years, and at the Sollicitation of his Mother left his Master's Service to go and stay at a Kinsman's House; that the Defendant sent him thither Tools and Brass, and Copper to work with; which when finished were carried by the Mother to the Defendant, who sent him back Money for the Work; but that he never saw Defendant at his Kinsman's where all the Work was done; and the Boy own'd his Mother and a third Per-

son
it appeared
in Evidence
that Defen-
dant sent
Work to him,
but never saw
him, and
Plaintiff was
non-suited.

2 Saund. 169.
2 Keb. 693,
697.
1 Lev. 299.

son told him the Defendant had sent him those Things to work. The Defendant's Counsel objected, That this Evidence did not support the Declaration; because Defendant never saw or had any Discourse with the Apprentice.

Salk. 68.

2 Lev. 63.

And the Chief Justice said, The material Point in this Case turns upon the Words in the Declaration, *detained and kept*; the Declaration is good, but the Evidence does not prove it. If an Apprentice works for another Person who receives the Money arising from such Work, the Master may maintain an Action for the Money. See *Fawcett* against *Beavers & ux'*, 2 Lev. No Man can properly be said to detain and keep another's Servant whom he never saw or spoke with. And the Plaintiff was nonsuit.

N. B. In an Action on the Case for retaining of his Servant, whereby he lost his Service, the Plaintiff ought to prove that the Defendant knew that he was his Servant. *Trials per Pais* 365.

Trinity, tenth of George the First.

The King against Godfrey.

Order in Bastardy
quash'd, not
saying where
the Child
born.

229. AN Order was made upon the 18th
Eliz. ca. 3. by two Justices, in
Relation

Relation to the Father of a Bastard Child. Exception taken to the Order was, That it did not set forth in what Parish or County the Child was born. On the other Side it was insisted that the Order was good; for in the recital Part, which were the Words of the Church-Wardens, it appeared the Child was born in the County and Parish where it was supposed; and though it did not appear in the Adjudication Part of the Order, which were the Words of the Justices; yet it would be necessarily implied that the Child was born within the same Parish and County; and where a Thing is necessarily understood, it is the same as if it had been express'd. 1 *Vent.* 336. 3 *Cro.* 763.

It was said that this is an old Objection, and was allowed in the Case of the Queen against *Biddington*, *Easter 10 Anne.* the King against *Blackwell*, *Mich. 1717.* and the Order was quashed by the Court.

Mr. Justice *Fortescue*: Orders must not be made good by *Implication*, and if it does not appear that the Child was born in the County, the Justices have no Jurisdiction, unless it appears to be born in the Parish; for this is an Order to indemnify the Parish; and it ought first to appear the Parish is agrieved before such an Order can be made.

Hilary, eighth of George.

The King *against* England.

Exception to
Order in Ba-
stardy, not
said whether
Male or Fe-
male.

230. **E**Xception to an Order of Bastardy, because not said whether Male or Female; but only alledges it lately born, Shew Cause.

Mich. twelfth of George.

The King *against* Bryan.

Commitment
by one Ju-
stice for a
Bastard, when
by the Statute
it should have
been by two;
the Woman
discharged.

231. **M**R. Gapper moved to discharge Defendant brought up by *Habeas Corpus*, and upon the Return of the Writ it appeared that one *Anne Bryan*, single Woman, was committed by Order of one Justice of the Peace, for bearing a Male Bastard Child, which Child was likely to become chargeable to the Parish where born; for Statute 18 *Eliz. ca. 3.* gives a Power to two Justices, *Quorum unus*, to commit and punish Women having Bastards, where the Mother or reputed Father cannot indemnify the Parish; but this Commitment is irregular, being made by one Justice, who alone had no Power.

1 J. 1. c. 4.
18 *Eliz. c. 3.*
2 *Bulst. 348.*

Mr.

Mr. Justice Fortescue said he did not see what Defendant would get by being discharged, for she would be recommitted by a new Order for this Offence.

But by the Court: The Commitment now before us is illegal and void; and she was discharged.

Michaelmas, thirteenth of George.

The King against Greg.

232. **A** MOTION was made to quash an Order of Bastardy, by which Defendant was ordered to pay two Shillings Weekly to the Parish, until the Child become two Years old, and so long as it shall be chargeable to the Parish of *North-Shields*. Order of Bastardy quash'd, being for Defendant to give Security.

By the Court: An Order to pay Money until such a Time, is bad. The King against *Brown, Salk. 480.* 2. The Order enjoins Defendant to give Security to perform the Order of Justices; this was thought bad, for the Justices have no Power to make such an Order. 3. Here does not appear to have been any Summons; it was answered, That had been held not necessary to be set out; for the Court will intend it. The Defendant is also to pay *four Pounds*.

Salk. 124.

in gross in three Months Time, which the Court said might well be, 1 *Vent.* 336. and afterwards the Rule was made absolute to quash the Order.

Mich. first of George the Second.

The King *against* Street.

Order to pay
so much a
Week till the
Child was
nine Years
old; good.

233. **A**N Exception was taken to an Order of Bastardy, which ordered the putative Father to pay so much a Week until the Child was of the Age of nine Years, without saying if the Child continues so long chargeable; and therefore the Order is wrong.

Mr. Serjeant *Hussey* in Answer said, Queen *against Smith, Easter 11 Anne*, an Order to pay so much a Week till the Child was eight Years old, this Exception was taken then and over-ruled; Queen *against Higden, Mich. 9 Anne*, an Order to pay, &c. till nine Years old; held good; King *against Stone, Hil. 2 Geo. 1.* to pay till twelve Years old, and Order affirmed. So King *against Miles, Michaelmas 1 Geo. 1.* These Cases are grounded upon these Reasons, That the Court cannot presume a Bastard Child can have any Provision made for it, or to be able to procure itself a Main-

Maintenance under that Age. And the Court now agreed these Cases to be in Point to the present Case.

Mr. Serjeant *Gapper*, who made the Objection, cited 1 *Salk.* 121. an Order to pay so much till the Child was fourteen Years old, held naught, 1 *Vent.* 46. an Order to pay, &c. till twelve Years old held insufficient.

Chief Justice: The late Resolutions have held these Orders thus drawn to be good, and the Court affirmed the Order.

Trinity, first of *George* the Second.

The King *against* The Inhabitants of Arundell.

234. **T**WO Justices make an Order that Defendant should pay a *Sum in Gross*, and also two Shillings *per Week* so long as the Child should be chargeable; the Party appeals to the Sessions who confirm the first Order; at a Subsequent Sessions the Father of the Bastard desired to have the Keeping of the Child, and that the Payment of the two Shillings *per Week* should cease, which the second Sessions ordered. Motion was made to quash this last Order of Sessions, because in this Case they

Order in Bastardy quash'd, being made three Years after Appeal.

they had no Jurisdiction. If an Order of Bastardy be made by two Justices, then an Appeal lies to the Sessions; but where an original Order is made at the Sessions, there can be no Appeal to another Sessions, which deprives the Party of a Means to examine the first Judgment. Now the Court held, that second Sessions had no Authority to order the Substraction of the two Shillings a Week, for it was no Security to the Parish; indeed this Order was quashed; because it was made out of Time three Years after Appeal, therefore Justices had no Jurisdiction.

The same Term.

The King *against* Marlborough.

Order in Bastardy
quash'd, the
Mother of the
Bastard being
a married
Woman, and
it not therein
appearing
that the Husband and
Wife did not
come together.

235. **E**Xceptions taken to an Order of Bastardy, which set out, That whereas a Male Bastard Child is begot on the Body of *Sarah*, the Wife of *R. Kenn*, and whereas it appears to us that *Stephen Brown* has had Carnal Knowledge of her Body, therefore we adjudge the said *Stephen Brown* the putative Father of the said Bastard Child. 1. The Mother of this Child appears to be a married Woman. 2. The Reasons given by the Justices of their Adjudication are bad, for *Brown* might have

car-

carnal Knowledge, and yet not be the Father of the Child; for since it is not said in the Order when he had that Carnal Knowledge of her Body, it might have been seven Years ago. To this it was answer'd, that the Justices have specially stated in their Order, that the Woman's Husband R. Kenn had not been heard of for six Years last past; it shall be presumed, that he had used her Body lately.

Mr. Reeve replied, That it was an insufficient Answer, unless it had appeared in the Order, that they never met or convers'd together all that Time, *Salk.* 483. or that the Husband was not *infra quatuor Maria* all that Time; for if he had been *infra quatuor Maria*, the Law would intend a Communication between the Husband and Wife, and then the Order must have drop'd; but that does not appear in the present Case, and therefore the Order will stand.

Chief Justice: The Court have given all the Reasons they could give in this Case, nor can we intend they had any more to give.

Mr. Justice Page: An Order must appear to be good at all Events; but this is a bad Order, because no where said that the Husband and Wife did not come together all that Time.

Mr. Justice Reynolds: The Order is wrong, because it does not appear that Proof was made

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made on Oath that *Brown* is the Father of the Child; but only that *it appears* that he had *Carnal Knowledge* of her Body; but it does not appear when that was.

Mr. Justice *Probyn*: If the Reasons given by the Justices do not support their Order, the Order must fall; the usual way is to ground their Order on the Oath of the Woman, the Mother of the Child, and said he should think the Order would have been good, if it had been said, that upon Consideration of the Premises, proved upon *Oath* before us, we therefore adjudge him to be the Father. Then it was moved that *Brown* should be bound over to appear at the Sessions of the *Borough*; but it was answered and agreed, that by the Statute 18 *Eliz.* he must be bound over to appear at the Sessions of the County. Order quash'd by the Court.

Bastardy shall be try'd *per pais*, and not by the Ordinary, in an Action on the Case. *Hob.* 179.

Mich. third of *George* the Second,

The King *against* Buckle.

Order of Bastardy quash'd, for directing Defendant to give Security, and awarding an Attachment.

236. A MOTION was made to quash an Order of Bastardy on the following Exceptions.

1. The

1. The Justices order the Defendant to pay two Shillings a Week to the Church-Wardens till the Child comes to the Age of twelve Years; this is wrong, for the Child may have an Estate left to it; or otherwise be able to provide for itself before that time; and then can be no Charge to the Parish.

By the Court: The Order is bad as to that Exception.

2. The Justices have ordered Defendant to give Security to indemnify the Parish, which they have no Authority to do.

3. Complaint to the Justices not made by the Parish where the Child was born.

4. They have ordered Defendant to pay *four Pounds in Gross*, when the Child comes to the Age of twelve Years; but if the Child happens not to be chargeable, then this Order will not bind.

5. Sessions has ordered an Attachment against Defendant for not complying with the Order of two Justices; which is absolutely irregular.

Mr. Yeates on the other Side: If an Order of two Justices is void for Part, and against Law; yet the Court will confirm that Part which is good. 1 Syd. 150. The Justices are to take Notice of the Complaint, and the Statute 18 Eliz. ch. 3. §. 2. " gives Power to two Justices of the Peace,

“ *Quorum unus*, to commit the Party of-
 “ fending against the Order to the Com-
 “ mon Gaol, there to remain without Bail
 “ or Mainprize, except he, she, or they
 “ shall put in sufficient Surety to perform
 “ the said Order, or else personally to ap-
 “ pear at the next General Quarter-Sessions,
 “ to abide such Order (if any) as shall
 be made, &c.” This seems to justify the
 taking Security to indemnify the Parish,
 and in the Case of the Queen against *Weston*, *Trin. 4 Anne*, *Salk. 122*. Chief Jus-
 tice *Holt* said, That if the Sessions pro-
 ceeded on the 18th of *Eliz.* they have no
 Power to commit, but to proceed on the
 Recognizance. But if on 3 *Car. 1. ch. 4.*
 §. 15. the Sessions may commit, as the
 two Justices might have done, that is, un-
 less the Party put in Security to perform
 the Order, or to appear at the next Sessions;
 as to that Part of the Order which requires
 the Defendant to pay Money till the Child
 comes to such an Age; the Cases of the
 Queen against *Smith*, *Easter* the eleventh
 of *Anne*, the King against *Street*, *Mich.*
1 Geo. 2. and the late Resolutions have ad-
 judged Orders made in this Manner to be
 good. The King against *Stone*, *Hil. 2 Geo. 1.*
 The King against *Miles*, *Mich. 1 Geo. 1.*
 As to the Exception, that the Sessions have
 not a Jurisdiction to award an Attachment

for not complying with the Order of two Justices; in the second Part of *Hawkins's Pleas of the Crown*, Title *Attachment*, it is said all Courts of Record may commit; therefore the Sessions may. The Justices have a Power to order the Payment of a Sum in Gross, during a certain Time. *Slater's Case*, *Ero. Car.* 1 Vent. 336.

And by the Court: The Justices have a Power to order the Payment of a Sum certain, and there need be no Complaint in the Case of Bastardy; nor can it be supposed in Reason, that a Bastard who is *filius Populi*, and Heir to no one, can get a Livelihood before twelve Years old, or have any Friends to provide for it.

Sir *John Strange*: The Justices have no Power to order Defendant to give Security in the first Instance, as is done in this Case, until there be a Breach of the Order; and in that the Court thought the Justices had exceeded their Authority, but doubted as to that Part that ordered *four Pounds*; but ruled the Awarding an Attachment illegal; and Order was confirm'd in the other Parts.

Easter,

Easter, third of George the Second.

The King against Childers.

Order in Bastardy quash'd, because it did not appear thereby, that the Matter complained of was within the Jurisdiction of the Justices.

237. **A**N Order was made on Defendant by Justices at the Quarter-Sessions held at *Maidstone* in *Kent*: *Whereas* upon Complaint made by the Church-Wardens of *S.* that a Bastard Child is chargeable to the said Parish of *S.* *And Whereas* they have expended forty-five Shillings in and about the Lying-in of *A. B.* Mother of the said Bastard.

Mr. Filmer moved to quash this Order, because it does not appear any where on the Face of it, that the Bastard was born in the Parish of *S.* which had made the Complaint. *Easter 10 Anne*, Queen against *Biddington*, the King against *Godfry*, *Trin. 10 Geo. 1.* which was thus: *Whereas* Complaint has been made unto us by you the Church-Wardens and Overseers of the Poor of *Hitchin*, that on the 5th of *April* last, *Eliz. Burroughs* of *Hitchin* aforesaid, single Woman, was delivered of a Male Bastard Child in the Parish of *H.* which is now living, and ever since his Birth has been chargeable to the said Parish of *Hitchin*; We adjudge *R. Godfry* the reputed Father, and

and order him to pay three Pounds seventeen Shillings, being the necessary Charges and Expences which the said Parish hath already been put unto in Nursing and Maintenance of the said Child, from its Birth to the Date hereof; the same Exception was taken and held good. Neither is it said in this Order, that the Woman was brought to bed in the Parish of S. which ought to appear before they can ask Relief, as was held in Lord *Altham's Case*, *Mich. 6 Anne*, and there is nothing mentioned in the Order, to imply the Child was born there, but only that it is said to be chargeable to the Parish of S. which in Lord *Altham's Case* was held not to be sufficient; nor are Orders of this kind to be made good by *Implication*; the Justices must entitle themselves to a Jurisdiction. The Order expresses that the Parish of S. has expended forty-five Shillings about the Lying-in of the Mother of the Bastard, but does not charge the Lying-in to be in the Parish of S. or that the Money was expended there, and a Rule was made to shew Cause why the said Order should not be quash'd.

Afterwards Mr. *Lacy*, to shew Cause, said, That notwithstanding the Authority of *Godfry's Case*, yet here are other Words that make it evident the Child was born in the Parish of S. for the Justices make it a

Part of the Case that the Parish of S. had been put to the Charge of forty-five Shillings for the Mother's Lying-in, which they have ordered Defendant to pay, and it can hardly be imagined the Parish would have expended this forty-five Shillings, if they could have prevented it, and the Order expressly says that the Church-Wardens had complained the Child was chargeable to their Parish; whence it is necessarily imply'd the Child was born there. 1 Vent. 336. 3 Keb. 383. the King against *Jenning*.

The Court said, That the Justices have not a Power of acting in all Cases, and therefore if they do not shew in their Orders that the Matter complained of to them is properly within their Jurisdiction, they cannot make an Order relating thereto, as this is a Case of that Sort, for ought appears, the Matter was *coram non Judice*, and the Order must be quash'd.

Mich. eleventh of George the Second.

The King *against* The Inhabitants of Freshford.

Mandamus
will not lie to
make a new
equal Poor's

238. **M**R. Gundry came to shew Cause why no *Mandamus* should go to

to make a new equal Poor's Rate upon Rate, but the
Mrs. *Davison's* Affidavit, that her Farm proper Me-
was rated at forty-four Pounds *per Annum*, thod is an
though let only at thirty Pounds, and that Appeal to the
the Vestry had refused to do it. Sessions.

The proper Method is by Appeal, and this Court will not interfere, as there is a Rate in Being, and there is no Instance of such a *Mandamus*; the Adjudication of the Quarterly Sessions is final by the Statute.

Sir *Thomas Abney* on the other Side: *Certiorari* is denied, because during this there could be no Provision for the Poor.

Chief Justice: The Party is not without Remedy; the proper Method is by an Appeal to the Sessions, and if one be lodged, and the Sessions will not proceed upon it, then a *Mandamus* will lie; and to make a Return would subject the Officers to Actions. By the whole Court Motion denied.

Easter, eleventh of *George* the Second.

The King *against* Flint and another.

239. **I**ndictment against Defendants in Judgment
these Words, "For carrying and after a Ver-
" conveying, or causing to be carried and dict arrested
" conveyed, with an Intent to burthen the for Uncer-
" Parish of *Chelmsford*, two Persons ha- tainty, being
" ving, the Small Pox." in the Dis-
junctive.

Mr. *Lacey* moved in Arrest of Judgment for Uncertainty, and cited the King against *Stoker*, *Salk.* 371. the King against *Stoughton*, the King against *Brereton*, *Mich.* 11 *Geo.* 1.

Sir *Thomas Denison* on the other Side cited the King against *Best*, and relied on Verdict. 1 *Syd.* 91.

Mr. *Marsh* in Arrest of Judgment : Not said that these Persons had not a Settlement at *Chelmsford*, nor that they were Poor ; Verdict in a criminal Case of no Weight.

Mr. *Lacey* : Did convey, or cause to be carried and conveyed ; nothing can be helped on an Indictment ; it is different from *Salk.* causing to be forged is a Forgery, but carrying and conveying, or causing to be carried and conveyed, may be different Offences ; if bad on Demurrer, it must be bad after Verdict.

Mr. Justice *Page* thought it too large, and Verdict will not aid it, thought it ill on both Exceptions.

Mr. Justice *Probyn* : This differs from Conspiracy, because that depends on precedent Matter, this on Act agreed.

M. Justice *Lee* : It is bad on both Exceptions, and the Reason is, because the Court cannot see what Fine to set, not knowing what was the Part Defendant acted.

An

An Indictment for a Consequence without any Premisses to warrant it, being with Intent to burthen, but not shewn how; perhaps Cases in Law, where Intention may be plainly inferred from Premisses, there Indictment is good. Judgment arrested.

Hilary twelfth of George.

The King against Hart.

240. **M**R. Serjeant *Eyre* prayed a *Procedendo* in an Indictment of Assault and Battery found at the Sessions at *Bristol*, where the Defendant came in and confessed the Indictment; and before Judgment given the Prosecutor sued out a *Certiorari* to remove the Indictment; but he said as the Conviction was entered, they had lost the Benefit of a *Certiorari*. Shew Cause.

Motion for a *Procedendo* in an Indictment for an Assault, the Prosecutor suing out a *Certiorari* to remove it.

Michaelmas, thirteenth of George.

The King against Tilsley.

241. **T**HE Defendant was a Clergyman of good Credit, and had a Decent Living in *Oxfordshire*, and was charg'd with stealing a handful of Hay, which was

Motion for a *Certiorari* to remove an Indictment for stealing a handful of Hay.

swore by Affidavit not to be worth one Penny; the Indictment was found against him at the Sessions in the Jurisdiction of *Chipping Norton* in that County; the Case was spirited up by a Town-Clerk who had charged the Jury to find the Bill, and therefore it was said Defendant had no Hopes of obtaining an impartial Jury, if the Indictment was to be try'd within the Jurisdiction, since the Town-Clerk returns the Jury.

Mr. *Fazakerly* on an Affidavit of these Circumstances moved the Court for a *Certiorari* to remove the Indictment *into this Court, or to be tried at the Assizes*, and alleged that a *Certiorari* had been granted to remove an Indictment of Felony found at the Sessions for the County of *Salop*, the King against *Powel*, upon Mr. *Chancey's* Motion. The Chief Justice seemed very angry at this Behaviour of the Town-Clerk, and granted a Rule to shew Cause.

Trinity, first of George the Second.

The King against Buse.

Motion to
quash a *Certi-*
orari to re-
move an In-
dictment af-
ter Judgment
refused.

242. **T**HE Defendant was indicted for keeping a Bawdy-House, and Judgment thereon, that he should stand in the Pillory; a *Certiorari* being granted to remove this Indictment, Mr. *Fazakerly* moved

moved to quash it; because after Judgment it won't lie; there ought to be a Writ of Error brought; but if a *Certiorari* can have the same Effect, no Writ of Error will be hereafter brought in this Court.

Lord Chief Justice *Raymond*: A *Certiorari* certainly lies; but then a Writ of Error should be brought with it.

Then Mr. *Fazakerly* objected, that there was a Variance between the *Certiorari* and the Indictment returned; the *Certiorari* was to remove an Indictment whereon they had proceeded to Conviction; and the Indictment returned had Proceedings on it to Judgment. But the Court held this well enough; the Court would make no Rule, but said they might do as by Law they could.

Hilary, second of *George* the Second.

The King *against* The Inhabitants of
Darlington.

243. **M**OVED to reject the Return of a *Certiorari* directed to two Justices of the Peace *Forth* and *Cook*, to bring up some Orders made by them. 1. Because the Return was upon Paper, not Parchment. 2. *The Return is in English*, Comb. 289, when it should be in Latin. 3. The Writ

Rule for a new Return to a *Certiorari* granted.

Sessions Cases adjudged in the

is directed to both of them, but returned by one only; and a Rule was granted to make a new Return.

Trinity, twelfth of George.

The King against Lewis.

Certiorari granted to remove an Indictment for a Misdemeanor, from the Grand Sessions to an *English* County.

244. **T**HE Defendant was indicted at the Grand Sessions for the County of *Anglesey* for Embracery, and the Defendant now moved the Court for a *Certiorari* to remove this Indictment into the next *English* County to be try'd on an Affidavit, which was allowed to be sufficient to induce a Suspicion that a fair Trial could not be had in *Wales*; and a Rule being granted to shew Cause, it was admitted, that in Cases of Felony such *Certiorari* lay to *Wales*, by the Statute 26 *H. 8. ch. 6.* but for Cases of Misdemeanor only it never was granted, and to prove this Distinction Mr. *Wilbraham* for the Prosecutor cited several Cases, *Cro. Car. 331. 1 Roll. Abr. 394, 248. 1 Mod. 68. 1 Vent. 93, 146.* and he cited the Case in *1 Roll. Abr. 394.* to shew that *Certioraries* are not to be granted at the Instance of the Defendant, but only of the King, who by his Prerogative may try his Cause where he will; but

but so cannot a Defendant. On the other Side it was insisted that this Court has a Superintendency in all Criminal Cases, and may direct Trials of Offences in any Place they think proper. And Mr. Serjeant *Probyn* insisted, That if *Certioraries* are grantable in Capital Cases, *a fortiori* they may be granted in Cases of Misdemeanor only; and the Statute 26 H. 8. only appoints that an Indictment may be found by a Grand Jury out of *Wales*, for a Felony committed there, but that the Statute says nothing of removing Indictments by *Certiorari*; and yet it is a Practice which hath constantly prevailed.

Mr. *Filmer* of the same Side cited *Cro. Ja.* 484. where an Indictment for a Riot in *Wales* was removed by *Certiorari*, and *1 Vent.* 146. which last Book shews that an Indictment may be removed by *Certiorari* at the Application of the Defendant. The Court on this Motion had some doubt; because they said they could not see any Precedent where an Indictment for a Misdemeanor was removed by *Certiorari*, and afterwards sent down to be tried; and therefore took Time to consider of it, and to look into Precedents, and at another Day several Precedents were produced, and *Posteas* where the Indictment removed from the Grand Sessions had been sent down to be try'd

try'd in an *English* County, and returned up into this Court; therefore upon these Authorities the Court granted a *Certiorari* in the present Case.

Trinity tenth of *George*.

The King *against* Goulston.

Motion for a *Certiorari* to remove an Indictment from the *Old Baily* to the King's Bench, denied.

Salk. 151.

245. *SIR John Darnel* moved for a *Certiorari* to remove an Indictment found against the Defendant at the *Old Baily*, into this Court to be try'd here; it was an Indictment for a Cheat, and he insisted that the Defendant being a Gentleman of Fortune and Character ought not to be tried amongst Common Felons; and said this had been formerly done where the Defendant was a Person of Credit and Reputation. But by the whole Court it was denied, and said by the *Chief Justice*: We never grant a *Certiorari* but on particular Reasons, and the Defendant's being a Man of Character is no Reason why we should indulge him in this Case; therefore the Motion was denied.

Trinity,

Trinity, tenth of George.

The King against Pusey.

246. **D**efendant was a Gentleman, and The like Motion denied,
 had been a Colonel in the Army, and being indicted at the *Old Baily* for Perjury; he now moved for a *Certiorari* to remove the Indictment into this Court; and though his Counsel allowed that a Writ for this Purpose had seldom been granted, yet as the Defendant was a Gentleman, it would be hard to subject him to a Trial in the publick way at the *Old Baily*, and urged that it was granted in the Case of *Sir Humphry Mackworth*, which was thus: *Sir Humphry* was Governor of the Mine-Adventure Company, and he put the Common Seal of the Corporation to a Writing without the Privy or Authority of the Company; and they would have construed this a Forgery in *Sir Humphry*, and for which he was indicted, and a *Certiorari* Certiorari granted in *Nebuff's Case*, Salk. 151. granted. But the Court deny'd that Case was like this; and *Raymond* Chief Justice said he knew no Distinction of Persons, either the Rule must stand or be altered in general; if we grant it here, we must grant it in every Case, therefore denied the Motion.

Mich.

Michaelmas, eleventh of George.

The King *against* The Commissioners
of Sewers in the County of York.

Certiorari
granted to
remove an
Order of
Commission-
ers of Sewers
into the
King's Bench.

247. **A**T a Court held before the Commissioners of Sewers an Order was made to remove their Clerk, and another appointed in his Room, and a *Certiorari* was moved to remove this Order into the King's Bench.

Mr. Serjeant *Pengelly* : A *Certiorari* is not to be granted *ex debito Jusitiæ* in this Case, nor unless some Affidavit be made to shew the Court a Reason why such Order should be removed. In common Cases *Certioraries* are granted of Course, but are never granted to remove the Orders of Commissioners of Sewers, but where some Allegations are laid before the Court as a Reason to induce the Removal of those Orders; and then it is in the Discretion of the Court to grant a *Certiorari* or not, as they see Occasion. The Commissioners of Sewers are appointed by Act of Parliament, and should this Court interpose upon every Occasion, and remove their Orders without first having a sufficient Reason laid before them, the Safety of the County might be endanger'd

endangered by the overflowing of Water, &c. which their Orders are made to prevent.

Chief Justice and Mr. Justice *Raymond* said a *Certiorari* was to be granted *ex debito Justitiæ*; for this appearing to be an Order which only concerned the removing the Commissioners Clerk, the Court could not deny to grant the Writ; and if upon the Return the Order shall appear to be irregular, the Court may quash it like any other Order; but if this had been an Order which concerned the Safety of the Country, the Court would not have granted it without an Affidavit or sufficient Reasons laid before them. Salk. 146.

Mr. Justice *Fortescue* denied that a *Certiorari* was due of Right; in this Case he said it was in the Discretion of the Court to grant it, and he agreed it should be granted, and the Writ was granted accordingly by the whole Court. See 1 *Lev.* 288.

Hilary, second of *George* the Second.

The King against *Coffing*.

248. AN Indictment was moved to be quashed for want of a Caption, and thereupon a Rule was made that the

2

Clerk

Motion for a *Certiorari* to remove the Caption of an Indictment which was brought into Court, denied.

Clerk of the Peace should attend, and now moved on the behalf of the Clerk of the Peace for a new *Certiorari* to remove the Caption, the Indictment being brought into Court this Term. But Mr. Justice *Page*, the other Judges being absent, said he could not grant the Writ, because the Indictment being already moved, the Justices had no Record before them, and therefore could not make any Answer to the *Certiorari*, which was now prayed, and denied to grant the Writ.

Easter, twelfth of George.

Anonymus.

For a *Certiorari* to remove an Indictment found at the Grand Sessions.

Cro. Car.
439.
1 Vent. 69,
146.

249. **A** *Certiorari* was moved for to remove an Indictment found at the Grand Sessions; the Court said there was no Doubt but that they had a Power to grant such a Writ, but they said the Prosecutor ought first to be heard.

Mich. second of George the Second.

The King *against* Steer and others.

Justices not prevented from proceeding by a *Cer-*

250. **T**HE Defendants were indicted for a Riot, and when the Indictment

dictment was traversed, and the Jury actually charg'd and sworn, a *Certiorari* was delivered into Court; but the Justices were of Opinion that as the Jury were charg'd, the Indictment should be tried, and the Jury give their Verdict; all which was done, and then the Justices took Notice of the *Certiorari*'s being given in, but would not set a Fine.

tiorari delivered after the Jury sworn.

Mr. *Luke Robinson* moved for a *Certiorari* to remove the Record of the Conviction.

But by the Court: It is in the Discretion of the Justices whether they will proceed to set a Fine; and denied the Motion.

Note; It was said that the *Certiorari* issued out of Chancery, returnable in this Court; which Chief Justice said was wrong, and told him he should move to supersede the Writ, because it was erroneously issued; but *all the Court agreed* that the Justices were not tied up from proceeding by this *Certiorari*; and the last Day of the Term the *Certiorari* out of Chancery returned in this Court; was quash'd. In *Salk.* 144. it was held a *Certiorari* cannot be served after the Jury are sworn, and the Justices may return the Verdict. The King against *North*.

Trinity,

Trinity, second and third of George
the Second.

St. Peter's Bedford *against* The Parish
of Stephenton.

Certiorari
quashed for a
Misreturn.

251. **A** *Certiorari* issued to remove an Order of two Justices, and was directed to the Justices of the County, but returned by the Justices of the Borough, and for that Misreturn the *Certiorari* was quashed.

Mich. third of George the Second.

The King *against* Greenhaugh.

Certiorari
granted to re-
move an In-
dictment for
not working
at the High-
ways.

252. **T**HE Defendant was indicted for not working at the Highways, and on Mr. *Theed's Motion* the Court granted a *Certiorari* to remove the Indictment into this Court; for the late Statutes have not restrained the Proceedings at Common Law, relating to the Highways, from being removed into this Court; it was granted in the Cases of the King *against Eachard*, and the King *against Coleman*, 12 Geo. 1.

The

The same Term.

Anonymus.

253. **T**HE Court will grant a Rule, *Certiorari* to remove without Notice, for a *Certiorari* remove Presentments made to the Commissioners of Sewers, though not on the first Motion; but there must be an Affidavit made of the things being repaired, before the Court grants the Rule.

Certiorari to remove Presentments made to the Commissioners of Sewers, will be granted on Affidavit of the things repaired.

Mich. fourth of *George*.

The King *against* Iles.

254. **T**HE Defendant was indicted for Perjury at the *Old Baily*, and Mr. *Coningsbye* moved for a *Certiorari*, on the Part of the Defendant, to remove the Indictment into this Court, and that the Defendant would plead and try the Indictment in this Term; but *the Court* would not grant the Writ, notwithstanding he cited the Case of Sir *Humphry Mackworth*, and the Case of *Marriot*; for Motions of this kind have been often denied, unless some special Reasons be given to induce the Court to grant it, and no Hardship attends

Motion for a *Certiorari* to remove an Indictment from the *Old Baily* to the King's Bench, denied.

such a Denying of the Writ, for the Judges attend at the *Old Baily*, and he will be fairly tried there.

Easter, fifteenth of *George the Second*.

Case of the Parish of Sherborn in Dorsetshire.

Child of a
Certificate
Person cannot
gain a Settlement
by Service.

255. **T**HE Question was Whether the Child of a Certificate Person can gain a Settlement by Service?

The 9th and 10th of *William III.* says only by serving an Office, or renting a Tenement of ten Pounds *per Annum*, and by no other Means whatsoever. See 8 & 9 *W. III. ca. 30.* the Service was in the same Parish.

Chief Justice: The first Act relates to Children born or to be born.

2. Statute confines it to two particular Instances, (*viz.*) renting ten Pounds *per Annum*, and by serving an Office, and not by Service.

And it was agreed by the whole Court that he gained no Settlement by such Service.

Mich.

Mich. fourth of George the Second.

The King *against* Etford.

256. **T**HE Court denied to grant a *Certiorari* denied to remove an Indictment found before the Justices of Assize. *Certiorari* to the Justices of Assize for the City of *Exeter*, to remove an Indictment found against the Defendant for Forgery, though the Defendant had been punished for the same Offence, upon an Attachment.

The same Term.

The King *against* The Inhabitants of St. James's Westminster.

257. **U**PON a Rule to shew Cause, *Certiorari* granted to remove a Presentment for not paving the Street in the *Haymarket*, before the Doors not paving the Streets. *the Court* granted a *Certiorari* to remove a Presentment for not paving the Streets of several Inhabitants there, &c.

The same Term.

The King *against* Pease.

258. **T**HE Defendant was indicted for keeping a Bawdy-house, and Motion for a *Superfedeas* to a *Certiorari* removing found

an Indictment into the King's Bench after Judgment.

found guilty, and suffered Execution by standing in the Pillory, in pursuance of the Judgment, and afterwards *obtained a Certiorari* to remove the Proceedings into this Court; whereupon the Prosecutor moved for a *Superfedeas* to this Writ, for that a Writ of Error was the proper Process, and not a *Certiorari*. And a Rule was made to shew Cause. *Salk.* 144, 149.

Mich. thirteenth of *George* the First.

The King *against* The Inhabitants of an extraparochial Place called Black Friars, in Chichester.

Order of Justices appointing Overseers, quashed, not said to be House-keepers.

259. **A**N Order of Justices appointing *A.* and *B.* Overseers of the Poor of that Place was quashed upon an Exception, that it did not appear they were *House-keepers*.

The same Term.

The King *against* The Inhabitants of Chilmerton, and Inhabitants of Flagg in the County of Derby.

Sessions Appointment of Overseers, quashed.

260. **T**WO Justices appointed *A.* and *B.* Overseers of the Poor for these two

two Townships, by an Order dated the 2d of April 1725.

At *Easter* Sessions following, it was ordered by the Court, for the better and more easy Relief of the Poor within the Townships of *Chilmerton* and *Flagg*, being two Vills in the same County at some Distance from each other, and having usually maintained their own Poor jointly, That the Inhabitants of each Vill should severally henceforward choose their own respective Overseers, to be Overseers jointly of the Poor in the said Vills, and that they should severally collect the Assessments in their respective Hamlets, which Assessments should be made for the Maintenance of the said poor jointly, as heretofore they have usually done; and the Order and Appointment of the said Persons to be Overseers was likewise confirmed at the Sessions.

13 & 14
Car. 2. c.

Mr. Serjeant *Baines* moved to quash both these Orders; and his Objection to the first was, That it did not appear thereby that *A.* and *B.* who were the Persons appointed to be Overseers, were House-keepers, which is a Qualification expressly required by the Statute. And to the second he objected, that the Order of Sessions was void, because the Justices there had no *Original Jurisdiction* in that Case by the Statute 43 Eliz.

Y 3

Mr.

Mr. Reeve insisted, that these two Villages were to be considered as one Parish in Reputation, and consequently that there was a Power in the Justices to appoint Overseers for the Maintenance of the Poor jointly within these two Townships, and urged that it would be inconvenient to quash these Orders, and to subject the Overseers to Actions for the Collections they have made after the Year expired. But the Court quashed both the Orders.

Mich. thirteenth of George the First.

The King against Dr. Tanner.

*Mandamus ;
Return held
to be insuffi-
cient for want
of Certainty.*

261. **A** *Mandamus* was directed to the Defendant who was Archdeacon of S. to swear in J. S. into the Office of Church-Warden. He returned, that by Virtue of such a Canon, the Parson and the Parishioners are to choose Church-Wardens, and if they cannot agree, then the Parson is to name them, and then set forth that the Parson and the Parishioners could not agree in their Nomination, by which the Right devolves solely upon the Parson, who had accordingly nominated J. N. and therefore, &c. It was objected, that this Return was bad, because Church-Wardens are

are to be chosen of Common Right by the Parish; and it is by a particular Custom the Parson has a Right to choose one, but it does not appear by this Return there was any such Custom in this Parish. Chief Justice *Holt* was of Opinion that the Election of Church-Wardens belongs of Right to the Parishioners. The Returning a Canon is no Answer to a *Mandamus* in this Case, but a Custom may be return'd, *Hardres* 379. the Suggestion in the Writ must be particularly answered, *Salk.* 431. the King against Bailiffs of *Malden*, the Returning not duly elected, only wants a sufficient and known Certainty, for it may be meant either of an Election by the Parson or by the Parishioners. The Return is defective in not saying *as by the Writ is supposed*.

Lord Chief Justice *Raymond*: The Clause of We further certify that he was not duly elected, is a distinct and independent Clause from the rest; and for that Reason the Return is insufficient for want of Certainty. It is common in Returns to set out a particular Matter; but for fear of any Mistake they say in the End that he was not duly elected. A greater Certainty is required in a *Mandamus* and the Return to it, than even in an Indictment; the Return ought

to be so certain as that no Action may be brought to try the Fact.

Mr. Justice *Fortescue*: The Clause of We further certify, would be an Independent Clause, if there was not a different Election set out, for here appears to be two Elections. Adjourned.

The Book of Canons is, that the Parson may elect one Church-Warden, and the Parishioners another, *March Rep.* 5.

Mich. first of George the Second.

The King *against* Elliot.

One good Reason in an Order of Commitment renders the whole valid.

262. **A**N *Habeas Corpus* was sued out to remove Defendant; Gaoler returned that he was committed to his Custody by the Justices of a Corporation Sessions of the Peace; and on the Return these Exceptions were taken to the Commitment. 1. This Commitment appears to be made by two Justices at a general Sessions, and such an Act is illegal and void, because two Justices cannot make a Sessions. But the Stile of the Court always runs, Before *A.* and *B.* and their Fellows, Justices, &c. but this was not allowed, 1 *Syd.* 144. King *against Mayo.* 2. The Commitment says Defendant was concerned in an

an Affray, and after several Proclamations made for Silence, and he still persisting to disturb the Court, they fined him forty Shillings, and committed him for not paying the Fine. Then as the Commitment does not specify that they demanded the Fine of him, or that he refused to pay it; therefore the Commitment bad; not allowed. For by the Court, if there be a good Reason in the Order that will support the Commitment, and two bad ones in the same Order; the bad ones shall not vacate that which is a good Reason, but the good one shall weigh down the bad, and render the whole order valid. Defendant was remanded.

Trinity, second of George the Second.

The King against Brown.

263. **D**efendant was brought up by *Habeas Corpus*, after he had been committed by Warrant of Commitment dated 27 September 1727. and made in this Manner, To the Constable of, &c. or his lawful Deputy, These are in his Majesty's Name to require you to bring before us or some other of his Majesty's Justices of the Peace of the said County, the Body of *Stephen Brown*; That Whereas Complaint having

Exception to a Commitment in Bastardy, that at the Time of the Date there was not any Order made.

having been made to us that he is the Father of a Bastard Child; if he refuse to appear before us, then you are to carry him to the Common Gaol of the said County. They likewise made a Warrant to the Gaoler to detain him *till delivered by due Course of Law*. An Exception was taken to this Commitment, that at the Time it was dated it appears there was no Order of Bastardy made; and then the Justices had made a Warrant without any Foundation; for it is not sufficient to commit a Man barely upon a Complaint that he is the Father of a Bastard Child, unless it be adjudged that he is so; for the Order of Bastardy appears not to be made till two Days after the Date of the Warrant, and then the Order cannot support the Warrant. The Commitment is illegal in another Respect, for the Warrant requires the Constable, upon Refusal, to appear before the Justices to carry Defendant to the County Gaol; and this is in Effect making the Officer the Judge; but the Warrant should have been to have carried him before some Justice who should have committed him.

Mich.

Mich. fourth of George the Second.

The King against Solomon Nathan.

264. **T**HE Defendant was committed to Prison by Warrant of the Commissioners of Bankrupts; "Whereas we, &c. have found and adjudged that S. N. did become Bankrupt, &c. And Whereas we have caused the said S. N. to be brought before us to the End we might examine him touching the Disclosure and Discovering his Estate and Effects, and it appearing to us on such his Examination, that the said S. N. hath remitted and conveyed great Sums of Money and Effects unto Parts beyond the Seas, with Intent to defraud his Creditors; and the said S. N. upon his Examination before us, &c. hath notoriously prevaricated; We do therefore will, require and authorize you, &c. to take into your Custody the Body of the said S. N. and him safely to convey to his Majesty's Prison of the Fleet, and there to deliver him to the Warden of the said Prison, who is hereby authorized to receive the said S. N. into his Custody, and him safely to keep without Bail or Mainprize, until he shall make a full
" and

Exceptions to a Warrant of Commissioners of Bankrupts in Point of Form, whereby Defendant was discharged.

“ and true Discovery of his Estate and Effects, &c. or he be otherwise delivered “ by due Course of Law.”

The Defendant brought an *Habeas Corpus*, and the Commitment and Return to the Writ being read, he moved to be discharged out of Custody, and took Exceptions to the Warrant; That this Authority given to the Commissioners to commit to Prison, being a special Authority and a limited Jurisdiction created by the Statute 1 Jac. 1. §. 7 and 8. they ought in every Instance, where they commit to Prison, to shew they have acted within their Jurisdiction, for this is not like a Commitment founded upon a general Authority; the Defendant has not refused to be examin'd, nor does it appear he has prevaricated touching his Examination; the Word *Prevaricate* is a Term of a loose and uncertain Signification, and quite foreign to the Statute, neither does it appear he has prevaricated about the Matter of his Examination touching his Effects, and the Prevarication has no Respect to the Eloyning of his Goods. The Statute enacts, That upon a Commitment he shall be detain'd till he has better conformed himself; but this Commitment is on quite different Terms, viz. till he has made a full Discovery of his Effects, &c. The Commissioners ought to keep themselves

selves to the Form prescribed by the Statute, as it is resolved in *Toxley's Case*, *Salk.* 351. who was committed by the Earl of *Nottingham*, till he should be delivered by due Course of Law, for refusing to be examined, and answer, whether *Jesuit* or not, according to 35 *Eliz. ch. 2.* which impowers the Justices to examine and commit him, if he refuse to answer such Questions. So *Bracy's Case*, *Salk.* 348.

Mr. *Reeve* said, That according to his Notes of that Case, *Bracy* was committed till he conform, or otherwise be discharged by due Course of Law, which last Words are omitted in the printed Case.

Sir *John Strange* on the same Side: The Commissioners have stated in the Commitment, that by his Examination they find he has concealed his Effects, but upon the Statute of 1 *Jac. 1.* they ought to have exhibited Interrogatories in Writing to the Defendant, and examined him upon those Interrogatories; but no Step of that kind has been taken by the Commissioners in this Case; which is wrong in them; so that to constitute the Offence, Interrogatories ought to have been shewn him, and before that is done he is guilty of no Crime, and therefore his Commitment is illegal; and if he had misbehaved himself, then he might have been set in the Pillory, by the Statute

Statute 21 *Jac.* 1. Every Commitment of this and all other of the same Nature ought to be very certain, and not grounded on slight Expressions; and the Continuance of the Commitment cannot be justified, as may be evinced from the Cases in *Salk.* and ought to be taken strictly, as depriving the Subject of his Liberty; in the Case of the King against *Tracey*, *Hil.* 1 *W.* 3. Articles by way of Interrogatories shall be in Writing.

Mr. Justice *Page* cited a Case of a Bankrupt in the City of *Bristol*, committed by the Commissioners, and there held that the Articles charged against the Bankrupt in the Interrogatories, ought to be in Writing; and if the Bankrupt should desire Time to answer the Interrogatories, the Commissioners ought to give him a Copy of them.

Mr. *Reeve* against the Defendant: The Commissioners need not put the Interrogatories in Writing, much less insert them in the Warrant of Commitment; but the Court should intend that he was examined in that manner, especially it appearing by the Warrant that he was sworn and examined. The Subject Matter of his Examination is for Prevaricating to discover his Effects, and that appears by this Commitment. The Statute says, If he refuses to be examined, or does not fully answer

on Interrogatories, then he is to be Committed. Then it may be a Question, Whether a Man's being charged with Prevarication does not fall within the Description of the Act?

The Court held the Form of the Commitment should have been till he submit to be examined; every Prevarication does not subject a Man to a Commitment, nor is it said he prevaricated upon *such* his Examination relating to the Discovery of his Effects, but only that he prevaricated upon his Examination, which might be on some other Matter; the Commissioners ought to pursue their Authority strictly, nor can they commit in any other manner than that prescribed by the Statute.

And by the *Chief Justice*: A Man may prevaricate at his first Examination for half an Hour, yet in the Conclusion he may make a full and ample Answer, and therefore it is not at all proper to send a Man to Prison for such a Piece of Conduct, and nothing is more common than such Behaviour on Trials at *Nisi prius*.

The Court were unanimously of Opinion that the Commitment was void in Point of Form, principally, as not appearing he was examined on Interrogatories in Writing; and the Defendant was discharged from the Com-

Commitment, but remanded on some civil Actions depending against him.

N. B. In Answer to *Roxley's* and *Bethel's* Case in *Salk.* 348. This is such an Offence as is not bailable.

Michaelmas, eleventh of *George*.

The King *against* Edwards and others.

Motion to
quash an In-
dictment for
a Conspiracy,
denied.

265. **T**HE Defendants were indicted at the Sessions in *Essex* for a Conspiracy, and the Charge alledged against them in the Indictment was, That they being Overseers of the Poor in the Parish of *A.* and there being one *B.* a poor lame and infirm Woman within the said Parish, they had given a small Sum of Money to a Poor Man of the Parish of *C.* to marry this *B.* and so by this Contrivance had conspired to settle *B.* in the Parish of *C.* the Settlement of her Husband.

Mr. Serjeant *Baines* moved to quash this Indictment, because there was nothing criminal alledged therein. The giving a poor Woman a Portion, and marrying her, was a good Act, and not punishable as a Crime.

Secondly he insisted, that if this was a Conspiracy in the Defendants, it was not within the Jurisdiction of the Sessions.

Mr.

Mr. Serjeant *Comyns* on the other Side: A bare Contrivance to act to the Prejudice of another is Criminal. A Conspiracy is indictable, though no Act be done in Pursuance of it. 1 *Lev.* 63. 1 *Vent.* 304. *Poulton's Case*, 9 *Co.* 1 *Lev.* 125. 1 *Salk.* 174. If this had been a Conspiracy to put a Charge upon a single Person, it had been Indictable; much more so where the Conspiracy is to put a Charge upon a whole Parish, as in this Case the Defendants have done; and insisted that the Sessions had a Jurisdiction in Offences of this Nature, by Statute.

Chief Justice: Indictments for Conspiracies are not allowed to be quashed, where the thing that is conspired is in its own Nature Criminal. But where it plainly appears by the Indictment that the Act which was done to the Prejudice of another was a lawful Act; the Court hath a discretionary Power to quash. If it be doubtful whether the Act done be Criminal or not, yet if it be done with an ill Intent or Design, we will not quash the Indictment: I am of Opinion the Indictment in this Case ought not to be quashed; but the Defendants must be left to demur or plead to it; as they think fit; to which Mr. Justice *Powis* agreed.

Mr. Justice *Fortescue*: It must be governed by the Course of the Court in such Cases as these; and I never knew any Indictment, for so high an Offence as Conspiracy, quashed upon Motion, though the Act was lawful which is conspired, yet if the End of it be unlawful, it is a Conspiracy and indictable. He seemed to think the Sessions had a Jurisdiction in Indictments of this kind, and said the Commission of the Justices did give them a Jurisdiction.

Mr. Justice *Raymond*: Quashing is an Act of Favour, and wherever the Crime charged is of an high Nature, the Court having a discretionary Power will not quash, but put the Defendant to demur or plead as he can. And *by all the Court* the Motion to quash the Indictment was denied.

Salk. 174.

Afterwards, in *Trinity* Term following, the Defendant demurred to this Indictment, and had Judgment, because it was held not an indictable Offence.

Easter, eleventh of *George*.

The King *against* *Setterton*.

Indictment
for a high
Offence not
to be quashed
upon Motion.

266. **T**HIS was an Indictment against the Defendant, which set forth that the Defendant had endeavoured to lay
a Ba-

a Bastard Child against one *Lee*. There were several other Faults in the Indictment; upon which Mr. *Fazakerly* moved to quash it.

But *by the Court*: As this is an Indictment for so high an Offence, we will not ^{2 Bull. 343.} quash it whatever Faults it hath, and so left the Defendant to demur.

Mich. second of *George* the Second.

The King *against* The Overseers of Towcester.

267. **T**WO Justices of Peace removed a poor Woman with Child from *A.* to *Towcester*; the Overseers of *T.* persuaded the Woman by a Promise of five Shillings and a new pair of Shoes, to return to *A.* from whence she had been sent by the Order; she complied with this Offer, and was delivered of a Child in *A.*

Motion for an Information against Defendants denied, for a Conspiracy to charge a Parish with a Bastard's Settlement.

Sir *John Strange* moved for an Information against the Defendants as for a Conspiracy to charge the Parish of *A.*

But *by the Court*: The Woman and her Child may again be removed to the Parish of *T.* and that will discharge the Parish of *A.* of the Expence of maintaining them; you might have indicted them; they would

not regard his Urging it to be a thing of Example, which deserved the severer Punishment of this Court.

Lord Chief Justice *Raymond* : It was held in *Holt's Time* if a poor Person was legally removed, and afterwards by Stealth or Contrivance of the Officers got into another Parish, and was there delivered, the Child was esteemed to belong to the Parish to which the Mother had been legally removed, and not to that where born.

3 Bulst. 249.

Easter, fifteenth of George the Second.

Anonymus.

General Expressions in Orders of Bastardy, good.

268. **O**RDER of Bastardy: *Whereas* a Bastard was born in the Parish of *Gravesend*, &c. They order the Defendant to pay thirty-six Pounds for Maintenance and other incident Charges, &c.

It was objected, that there was no Adjudication that the Child was born in *Gravesend*, but only Recital, and further that it was too general, (*viz.*) incident Charges, not saying what those Charges were. But it was resolved by the whole Court, That the Order was well; for first, it is only to shew the Jurisdiction, which is not necessary to be adjudged.

Secondly,

Secondly, It is sufficient, for it must be understood to be Charges relating to the Bastard, and said that such general Expressions, in Orders of this Sort, were allowed, as in the Case of the King against *Backwell*, in the fourth Year of King *George* the first.

Easter, first of *George* the Second.

The King against *Wakeford*.

269. **M**OTION to quash an Order of Sessions relating to the Election of a Constable chose by a Court-Leet, for the Town of *Lymington*. The Order set out the Custom of nominating five Persons, one of which is named by the Mayor; that the Person named by the Mayor was postponed and another chose. Upon an Appeal from this Choice to the Sessions, the Justices order the Person chose and sworn Constable by the Steward of the Leet, to be discharged, and appointed the Person nominated by the Mayor to exercise the Office; and it was observed that the Statute 13 & 14 *Car. 2. ch. 12.* does not extend to give the Sessions any Power in this Matter. It was said for the Order, that Chief Justice *Holt* had laid down a Rule in the Case of *Chorley*, *Salk. 175.* that the Justices have

Order of Sessions appointing a Constable quash'd, the Power being in the Leet.

all along exercised a Power of appointing Constables, and the Court will intend they have good Authority for it. But the Statute 13 & 14 *Car.* 2. gives them Authority to do it only in the particular Cases therein mentioned; in *Sir T. Jones* 212, upon a Doubt that arose concerning the Election of a Constable, the Justices did determine who was chose, and the Order being removed into this Court was confirmed. So in *Salk.* 150. the King against *White*, held that Constables might be removed, and that Justices at Sessions were the best Judges of that Matter; so in *Comber. Rep.* 20. Mr. Serjeant *Cheshire*, who argued this Case, said, it was a necessary Jurisdiction, and ought to be favoured. 1 *Ro. Abr.* 535, 541.

By the Court: There is no Question but generally the Justices by Power of the Statute *Car.* 2. may appoint Constables; but here is a Custom alledged, which you may try if you will.

Mr. Serjeant *Hussey* on the other Side: In the Case of the King against *Pyke* and *Larrymore*, *Hilary* 8 *Geo.* 1. it was held that a Fact of this kind was not to be try'd by the Sessions, 1 *Bulst.* 174, *Mich.* 8 *Anne*, *Queen* against *Wheatcroft*, there was a Constable chose by a Leet, and an Appeal to the Sessions in Favour of one chose by the Parish at large, and the Sessions removed

moved him chose in the Leet, and appointed another in his Room; and the Order being removed was quash'd, unless Cause, and the Election in the Leet confirm'd; and then it was said by the Court that the Sessions derives this Power from the Statute *Car. 2.* which is not to be extended. *Queen against Dummer, Trinity 2 Anne.* It was held that a Constable chose in the Leet may have a *Mandamus* to swear him if opposed, the King against *Beal, Trinity 7 Geo. 1.* there the Sessions discharged a Constable who had been appointed Tithingman in another Place, and the Court held that the Sessions could not discharge him; nothing has been said to shew the Sessions has intermeddled before the Statute; *the Court* now deny'd the Case in *2 Jones*; and the Chief Justice said, Where the Justices have been in Possession of this Jurisdiction, it is good, but in this Case it appears the Leet at all times has exercised the Power of choosing, and quashed the Order.

Trinity, twelfth of George.

Hill *against* Bateman and another
before Raymond, Chief Justice in
Middlesex.

A Constable
is justified in
executing a
Warrant of a
Justice where
the Justice
has a Juris-
diction.

270. **M**R. *Bateman* was a Justice of Peace, and the other Defendant was a Constable who had executed a Warrant of Commitment upon a Conviction for destroying the Game; without levying the Penalty on the Plaintiff's goods. It was agreed in an Action of false Imprisonment, that as to the Constable the Warrant was a sufficient Justification; it being in a Matter within the Jurisdiction of the Justice of Peace; but if a Justice of Peace makes a Warrant in a Case which is plainly out of his Jurisdiction, such Warrant is no Justification to the Constable.

Easter, twelfth of George.

Delamot's Case.

Justice made
a Constable,
moves for a
Writ of Pri-
vilege, but
denied.

271. **M**R. *Delamot* was a Justice of Peace in the County of *Kent*, living within the County, and having a House also in the City of *London*; he was appointed

pointed Constable in the Ward where his House was.

Mr. Serjeant *Cheshire* moved the Court to grant him a Writ of Privilege, which the Court denied, saying they had nothing to do with it; but he might apply to the Sessions under the Statute *Car. 2.*

Mich. thirteenth of *George.*

The King *against* Goldsmith.

272. **T**HE Defendant was indicted for erecting and continuing two Cottages, without an Allotment of *four Acres* to each, contrary to the Act of 31 *Eliz.* *ch. 7.* Indictment for erecting a Cottage bad, for not saying when erected.

Mr. *Fazakerly* moved to quash it, and his Exception was, That it set out he continued the Cottages for the Space of ten Months and upwards, but does not set forth at what time the Erection was; then it cannot be computed from what Date the Erection, or rather the ten Months, is to be computed, and that is necessary to be done in order to tell for what time to assess the Penalty, since by the Statute there is a Forfeiture of *forty Shillings a Month* appointed; therefore it is necessary to shew at what Time the Erection was, and how long

long continued. *The Court* seemed to think this a good Exception, and made a Rule to shew Cause, which was afterwards made absolute without Argument.

N. B. The Erection or Conversion of an House to a Cottage is *ten Pounds to the King*, 2 *Inst.* 736. 31 *Eliz. ch.* 7. and *forty Shillings a Month* so long as he continues the same.

Easter, first of *George* the Second.

The King *against* Simpson.

Summons on a Conviction for Deer-Stealing necessary.

273. **A** Conviction for Deer-Stealing, made upon Oath of one credible Witness, the Defendant must be summoned, or the Court of King's Bench will quash it when removed by *Certiorari*.

Trinity, ninth of *George*.

The King *against* Ashton,

Conviction for destroying Fruit-Trees must ascertain the Punishment.

274. **T**HE Defendant was convicted for destroying Fruit-Trees, but the Conviction did not adjudge what Punishment the Defendant should suffer, as the Statute 1 *Geo. I. ch.* 48. directs.

To this Exception Mr. *Wearg* answer'd, That when the Party is convicted, the Punishment

nishment is provided and ordered by the Law, and is the necessary Consequence of such Conviction, and need not be expressed or appointed by the Justices of Peace.

Lord *Chief Justice*: The Statute particularly directs the Punishment for this Offence, and enacts, That if Justices of the Peace convict any Person of such Offence, then such Justices, immediately after such Conviction, shall commit such Offender to the House of Correction, there to continue and be kept to hard Labour for the Space of three Months, and where there are no Houses of Correction in any County where such Offender shall be convicted, the said Justices shall commit such Offender to the Gaol for four Months, and it is not sufficient for the Justices to say that the Defendant was convicted, but they must ascertain the Punishment pursuant to the Statute. Salk. 378;

Mr. Justice *Eyre*: In the Case of a Deer-Stealer the Conviction was adjudged sufficient without adjudging the Punishment. King against *Searle*, King against *Colebrook*.

Mr. Justice *Fortescue* seemed to be of the same Opinion. So it was adjourned.

*Trinity, eleventh of George.**The King against Slack and another.*

Conviction
quashed, be-
ing joint a-
gainst two
for a separate
Offence.

275. **D**Efendants were convicted for sel-
ling Hides not being Tanners,
and the Conviction set forth that J. S. had
informed the Justices of the Peace that
the Defendants *A.* and *B.* had sold Hides
not being Tanners; that they had neglected
to pay the Duty, by which Default they
had forfeited such a Sum. Upon Considera-
tion of the Information aforesaid, the said
two Justices had convicted the said Defen-
dants in such a Sum; and this Conviction
was quashed upon Motion, because here
were two Informations, one against *A.* the
other against *B.* and the Conviction was
joint, and no Distinction made what each
was to pay for his several Offence, but all
jumbled indiscriminately together.

*Michaelmas, eleventh of George.**Anonymus.*

Conviction
on the Statute
8 Geo. 1. for
receiving run
Goods, on se-
veral Excep-
tions held
well.

276. **T**HE Defendant was convicted on
the Statute 8 Geo. 1. *ch.* 18. to
prevent the clandestine running of Goods.
Two

Two Exceptions were taken to the Conviction; 1. There are several Clauses in the Statute prohibiting the clandestine Importation of Goods, and mentions particular things; and another Clause, upon which this Conviction is founded, provides a Penalty against any Person *receiving or buying* any Goods so clandestinely run or imported; and it was insisted, that the Conviction ought to have set forth how the Goods were clandestinely imported, for the Statute does not extend to all Goods clandestinely imported, but hath Reference to the preceding Clause, *viz.* Goods so imported, and extends only to Goods imported in that particular Manner. Another Exception, That it was not said that Defendant received the Goods for his private Lucre, and that he bought as well as received them all, which are the Words of the Statute that make the Offence.

By the Court: The Words *so imported* go only to a Description of Goods in general, and are not to be restrained to have Reference to the foregoing Clause. As to the Exception, that the Conviction had not set forth that Defendant received the Goods for his private Lucre; the Conviction says he received them unlawfully, which supplies it; and the Conviction need not set forth that the Defendant bought the Goods;
I for

for the Statute is in the Disjunctive, *buying or receiving*, and it is the Receiving which makes the Offence. Therefore Judgment was given for the King.

The same Term.

The King *against* Cole and others.

No Discharge
on Commit-
ment without
the Convic-
tion.

277. **T**HE Defendants were convicted of Deer-Stealing, and committed in Execution, and were brought up by *Habeas Corpus*, and the Warrant of Commitment was likewise returned and read. Moved to have the Defendant discharged.

But the Court said, We can do nothing upon the Commitment till the Conviction is in Court; for want of that, Defendants cannot be discharged, and the Conviction was ordered to be returned by *Certiorari*.

The same Term.

The King *against* Pratt.

Conviction
for obstruct-
ing an Offi-
cer of Excise,
upon Excep-
tion held
good.

278. **D**efendant was convicted on the 8th of *Anne*, *ch. 9.* for obstructing the Officer of Excise to enter his House and to weigh his Candles; and the Conviction

tion being removed by *Certiorari*, an Exception was taken to it, that it did not ascertain whether the Defendant refused the Officer Entrance in the Day-time, or the Night; for there is a Clause in the Statute which makes a Distinction between weighing Candles in the Day-time and in the Night, and provides different Remedies in each Case; therefore the Conviction ought to have shewn particularly at what time the Refusal was, otherwise the Justices did not entitle themselves to a Jurisdiction. But *the Court* held the Conviction good, seeing it was alledged that the Officer had been refused and hindred from making a lawful Entry, and the Court would presume that it was an Entry in the Day-time, and affirmed the Judgment.

Mich. first of George the Second.

The King against Wooffendale.

279. **M**R. Serjeant *Comyns* moved to quash a Conviction for cutting down Trees contrary to the Statute 6 Geo. 1. *ch. 16.* the Statute enacts, That if any Person cut down Trees without the Consent of the Owner, and be convicted thereof, he shall be liable to the Penalty of the Act. Conviction for cutting Trees moved to be quashed, but refused.

Now

Now the Conviction does not express that this was done without the Consent of the Owner, and possibly it might be with his Consent, unless the contrary be shewn, and then he cannot be punished for it.

Chief Justice: We always hear Convictions out of the Paper of Causes, never upon Motion; the Defendant should bring his Writ of Error to set aside the Conviction.

Easter, thirteenth of George.

The King against Betts.

Coaches attending Funerals for Hire, must be licensed.

280. **T**HE Defendant was convicted by the Commissioners for Licensing Hackney Coaches for plying in the Streets without Licence, contrary to the Statute 5 & 6 W. & M. ca. 22.

The Counsel for the Defendant opened the special Fact stated in the Conviction, that the Defendant plied as a Stage-Coachman to carry Persons from *Whitechapel* within the Bills of Mortality, to *Bow* and *Stratford* out of the Bills of Mortality, for one Shilling; that he took up a Person at *Whitechapel* for the whole Fare, and without any Appearance of Collusion set him down at a Place within the Bills of Mortality for Half his Fare, viz. Sixpence; it

6 & 7 W.

c. 18.

9 Anne, c. 23.

1 Geo. 1.

c. 57.

it was in the Way to *Stratford*, and he applied him for a Passage to *Bow* or *Stratford*; no Statute extends to this Case, for Stage-Coaches are intirely out of the Jurisdiction of the Commissioners. *Salk.* 612.

Mr. *Reeve* for the Conviction agreed, that Stage-Coachmen were not now obliged to take Licences; but the Statute of 1 *George* ch. 57. is a general Restraint that no Stage-Coach shall ply in the Streets without a Licence.

By the Court: The Statute of 1 *George* relates only to Coaches plying or driving for Hire, to attend Funerals without a Licence; there the Commissioners have Power to proceed to convict the Party in a Penalty of five Pounds; and this was spoke to a second time, when *the Court* held the Conviction ill, and quashed it.

Hilary, twelfth of George.

The King *against* Alkington Recorder, and Squire Mayor of Hertford.

281. **T**HE Defendants were Justices of the Peace for the Corporation of *Hertford*, and had committed one *Venables* for keeping a disorderly House, Information against Justices for convicting without summoning the Defendant.

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and

and the Order of Conviction being removed into this Court, an Exception was taken to it, That it did not appear *Venables* was summoned before he was convicted. But *the Court* confirmed the Order, because they said they would not intend that the Justices had convicted without summoning the Party, unless it had so appeared by the Order itself. But *the Court* said, If the Justices had really convicted without summoning or hearing, an Information would be granted against them for Male Practice; and afterwards, upon Affidavits of the Party's being convicted and committed without having been heard or summoned, an Information was granted against them both in this Term.

Note; This was an *Order*, and not a *Conviction*, for in a *Conviction* it is necessary.

Easter, eleventh of George.

The King against Tuck.

Conviction for 282. **T**HE Defendant was convicted for swearing several Oaths, and speaking several Curses. Curfing and Swearing on several Exceptions affirmed.

And Mr. *Fazakerly* moved to quash this Conviction upon two Exceptions;

1. In the Information given to the Justices of the Peace, the Defendant was a Gentle-

Gentleman, but in the Evidence which is set forth in the Conviction, and upon which it is founded, it does not appear of what Degree the Defendant was; and as the Statute provides different Punishments and Forfeitures for them of different Degrees, it ought to have appeared by the Evidence, that he was a Gentleman, and it is not sufficient that it appears so in the Information, for that is only a bare Information and not Oath, which supports the Evidence given of his Quality.

2. It does not appear in the Evidence that the Defendant was above sixteen Years of Age, which is required by the Statute to bring him into the Penalty of it, and though it is said in the Information that he was above sixteen Years old, yet that is not sufficient, it ought to have been in the Evidence which is upon Oath.

But *by the Court*: There is nothing in these Exceptions; by awarding him to pay two Shillings for each Oath it appears he was a Gentleman, and that is sufficient; but such Convictions ought not to be strained to hurt the Liberty of the Subject, and affirmed the Conviction.

Hilary, twelfth of George.

The King *against* Poplewell.

Conviction
for Swearing
must set forth
the particu-
lar Oaths.

283. **A** Conviction for Swearing was held to be ill because it did not set forth the particular Oaths; and the Court said this was a common Exception, and that the not setting forth the particular Oaths had been frequently adjudged to be ill. See the Statute of 21 *Ja.* 1. *ch.* 20. made to prevent prophane Cursing and Swearing, and also the Statute of the 20th of *Geo.* 2. touching the same.

Trinity, twelfth of George.

The King *against* Fish.

Indictment
for Extortion
refused to be
quashed on
Motion.

284. **T**HE Defendant, an Attorney, was indicted for extorsively taking five Shillings for an Arrest, whereas there was never any Arrest; and it was moved to be quashed, as not being Extortion.

But *the Court* said, they would never quash an Indictment of this Nature, but put the Defendant to demur.

Hil-

Hilary, twelfth of George.

The King *against* Banks.

285. **M**R. Serjeant *Hawkins* moved to quash an Indictment for a forcible Entry into a certain Messuage or Tenement, and one Garden and one Orchard. Upon the Rule to shew Cause he argued, That it has been resolved, that the Place in which the Force is supposed to be committed, must be described with convenient Certainty; for otherwise the Defendant would neither know the special Charge to which he is to make his Defence, neither would the Justices or Sheriffs know how to restore the injured Person to Possession. Hence it follows, that an Indictment of forcible Entry into a Tenement (which may signify any thing wherein a Man may have an Estate of Freehold) or into an House or Tenement, or into two Closes of Meadow and Pasture, or into a Rood of Land, or into such an House, without shewing in what Town it lies, is not good. *Dalton* 15. 2 *Roll. Rep.* 46. 2 *Ro. Ab.* 2 *Cro.* 621.

In an Indictment for a forcible Entry the Place must be described with Certainty.

The Court held the Indictment faulty as to the Messuage or Tenement, but good

A a 3

for

for the Residue. An Ejectment will not lie for one Messuage or Tenement. 3 *Mod.* 238. 2 *Bulst.* 317.

Trinity, twelfth of George.

The King against Parr.

Indictment
for a forcible
Entry must
set forth the
Party's Estate
in the Pre-
misses.

286. **T**HE Defendant was indicted for a forcible Entry, and upon a Demurrer to the Indictment two Exceptions were taken to it; First, That it did not set forth what Estate the Party had, which hath always been held necessary, *Easter 10 Anne*, the Queen against *Cumberland*; *Easter 11 Anne*, the Queen against *Hawley*; *Hilary 6 George*, the King against *Harrington*, *Salk.* 260. and the Reason is why the Estate of the Party must be set forth, because he may be Tenant at Will only, and if so he is not within the Statute of forcible Entry. The Second Exception was, It was set forth that the Defendant entered into the Lands of *J. S.* then and yet being the Freehold of the said *J. S.* *Stile* 87. which is absurd; for if this were true, there could have been no Disseisin, *Hil.* 10 *George*, the King against *Graham*; the King against *Clark*, 2 *Show.* 418, 272. *Allen* 52. The Court allowed both Exceptions

ceptions to be good; and Judgment was given for the Defendant.

Hilary, eighth of George.

Anonymus.

287. **I**T was moved to quash an Indictment for entering a Garden belonging to a Messuage of *A. B.* but did not say *A. B.* was in Possession, for the Defendant himself might be in Possession, and granted.

Indictment for a forcible Entry quash'd, for Uncertainty.

Hilary, thirteenth of George.

The King against Edmonds.

288. **T**HE Defendant was Indicted, for that he with Force and Arms entered the Close of *A. B.* and trod down his Grass with his Horse, broke his Hedges, and prostrated his Ditches, against the Peace, &c.

Indictment will lie for a private Trespass.

Mr. Marsh moved to quash it, and urged it was proper for an Action of Trespass.

But *by the Court*: The Indictment is well laid, being with Force and Arms, and will lie for a private Trespass.

A a 4

Hilary,

Hilary, first of George the Second.

The King *against* Sir Edward Ellewel.

Commitment
on Convic-
tion for a
forcible De-
tainer, with-
out imposing
any Fine, il-
legal.

289. **T**HE Defendant was convicted by three Justices of the Peace upon the Statute 15 *Rich. 2. ch. 2.* for a forcible Detainer, and sent to *Maidstone* Gaol, and being removed into this Court by *Habeas Corpus*, he moved to be discharged for an Irregularity in the Commitment; the Words of it were, *'till he should be delivered by due Course of Law*; but the Statute directs, that upon Conviction they shall be sent to the next Prison, and kept there till they have made fine and Ransom to the King. The Statute ought to be pursued, since the Justices derive their Authority from it.

This is like a Judgment and Execution at Common Law, if the Judgment is once given, a Man can have no Remedy against it; but if the Execution is wrongfully executed, the Party may have Redress against it. The Commitment is not in Court, but since the Words of the Statute are not recited it is vicious, and till the Fine is set the Commitment is not good,

On the other Side; If the Conviction upon the Record is good, the Nature of the thing will be a sufficient Guide to explain what is meant by due Course of Law. It was insisted the Justices are not obliged to set a Fine at the Time of the Commitment. The Answer is, That in the Case of *Jones*, committed by two Justices, a Fine was set that Instant, and the Rule for an Information was discharged.

Mr. *Marsh* for the Defendant: The Conviction sets forth, that she the Prosecutrix was seised of an Estate of Freehold at the Time of the Entry for her Life, but does not carry the Seisin of the Estate to the Time of the Detainer; the first might be a long Time before this, according to the Case in 1 *Sid.* 102.

Second Exception; Here the Justices have set no Fine; in Colonel *Layton's* Case, *Salk.* 353. it was objected upon the Return of the *Habeas Corpus*, that the Fine was set at another Time, but the Court held that the Fine might be set after the Conviction, as in *Lambard's Eirenarcha*. If this Case is grounded on the Statute *Richard 2.* the Justices cannot convict a Man of forcible Detainer without a prior Conviction of forcible Entry. But if this Case is built on the 8th of *H. 6. c. 9.* it is otherwise.

The

The Statute of *Richard 2.* only gives Power to convict on View, and for that very Reason ought to be pursued. The Statute enjoins Imprisonment till the Party makes Fine and Ransom, but here the Commitment is only till he pay the Fine; to say detaining contrary to the Form of the Statute, is not sufficient, without disclosing the Facts which may bring this Case within the Statute, as it is not well against the Form of the Covenant; the detaining the Possession of the House from her may be a legal Detainer; the Justices should have set a Fine; for the Statute of *Richard 2.* enacts, that the Party offending must be committed to Gaol, and remain convicted till Fine and Ransom is made to the King. This Conviction says, that she hath complained, and not in the present Tense complains.

Mr. Serjeant *Whitacre* for the King: This Court may impose a Fine, if the Justices do not, 7 *Ed. 1.* Statute of *Northampton*, 2 *Ed. 3. c. 3.* *Crompt. Jur. Cur.* 54. 15 *R. 2. c. 2.* I cite these Statutes and Authorities to shew the Judges of this Court have intermeddled with these Convictions, that the Statute of *R. 2.* gives time to set the Fine; and if a *Certiorari*, which in its Nature is a *Supersedeas*, as in this Case, was delivered by that time the Party got to Gaol, it de-vested

vested the Justices of a Power of setting the Fine, and 2 *Inst.* 419. proves the Judges of this Court may set the Fine; it has been done, 1 *Sid.* 156. the King against *Chaloner*, 1 *Keb.* 572, 585. where a small Fine was set by this Court Convictions on forcible Entries may be brought into Court by the Justices themselves, 4 *H.* 7. 18. *Crompt. Jur.* 186.

Court said: Can this, Brother, be done out of any Court in *England*, we ask you?

Lord Chief Justice *Raymond*: I never remember, where a Conviction is regular, and the Commitment is not exactly performed, that this Court has discharged the *Habeas Corpus* for removing the Commitment; I should be glad to have Precedents shewn me; we should have the Conviction before us; the Judge who sees the Offence done is the only proper Person to compute the Measure of it, and can we here be supposed to know the Offence better at this Distance than the Justices concerned in the View? This Method you argue for would let in a Tide of Oppression; for if the Party be committed until he has paid the Fine, he then has it in his own Power to pay it instantly; if on the Commitment the Justices do not set the Fine, he cannot be removed hither till the Term following, before which time this Court could not be ready

ready to set the Fine. The Power of Committing is intrusted to the Justices by Act of Parliament, and they must follow the Directions of the Act. In the Case of the King against *Leade*, I think the Court was of Opinion they cannot set the Fine; and there is a Case in *Keb.* reversed for this very Defect; here the Defendant is committed till the Fine is set; when the Words of the Commitment should be *till he pay it*, which presumes the Fine was set. 2 *Keb.* the King against *Sutton*, 671.

Mr. Justice *Page*: If it is necessary the Fine should be set before the Commitment, the Commitment is irregular.

Mr. Justice *Reynolds*: I am very doubtful whether the Practice of this Court doth authorize us to discharge a Warrant grounded upon a precedent Conviction, that is good, for a Fault in the Warrant. The Opinions in the Books are different where the Fine is to be set; in the Case of the Warden of the *Fleet* it was held, that if the Justices do not set a Fine, and the Proceedings are removed by *Certiorari*, this Court may not set the Fine, but the Justices ought to set it in a reasonable Time. I never could learn by what Power this Court could set a Fine, and I am at a Loss how to collect and apply the Statutes which my Brother *Whitacre* has cited. The Justices

Justices of Peace must set the Fine, and no Man can be committed indefinitely till he has made Fine by I do not know who, nor when, but till the Fine is liquidated; and the Justices are they who can compleat the Judgment. The Opinion of *Lambard* is very extravagant, and in the Case of the King against *Sutton*, upon Debate the Court quashed the Conviction upon this very Exception. The Conviction cannot be compleat till the Fine and Ransom be paid; they cannot commit for the Force, for what then can they? Why for the Fine which shews that the Commitment is only a Security for Payment of the Money, and therefore they cannot commit before the Fine is set. It must be quashed.

Mr. Justice *Probyn*: I do not think it necessary the Justices should fix the Fine at the Time of the Conviction. The Case of *Bracy* was a Commitment by the Commissioners of Bankrupts, for not answering Interrogatories, until he should be discharged by due Course of Law, and the Commitment was held void; because it should have been in this Stile, "Until he should answer the Interrogatories," and for that Reason the Party was discharged. 5 *Mod.* 309. The Court over-ruled all the Exceptions after it had been thrice argued, except that of the Fine which they held to be

be a good Exception, for they unanimously held *the Court of King's Bench* could not impose the Fine, but the Justices must do it, and as the Justices had not set a Fine, the Commitment was illegal; and the Defendant having been bailed by Consent, appeared upon his Recognizance, and was discharged upon Motion.

Hil. first of George the Second.

The King *against* Channell.

Indictment
will not lie
for Matter of
a private Na-
ture.

290. **T**HE Defendant was indicted, for that he did unjustly and unlawfully take and detain forty-four Pounds of Wheat, out of three Bushells he was to grind, and this was laid to be done with Force and Arms, and against the Peace.

Mr. *Fortescue* objected, Here is no Force set out, and as it is a Matter of a private Nature, it is more proper for a Civil Action than for an Indictment. 2 *Keb.* 391. 1 *Mod.* 71. 1 *Sid.* 208, 9.

Chief Justice: Whether this Matter be indictable or not, the Indictment now before us is not well laid; neither do I see that it is an Indictment, for it does not charge that the Defendant detained the Wheat for unreasonable Toll, nor that he

took it as Toll, but only that he keeps and detains so much of your Wheat; this sure is more proper for Trover or Detinue. Upon Demurer Judgment was given for the Defendant.

Trin. second of George the Second.

The King *against* Mountague and others.

291. **M**Oved for a *Mandamus* to be directed to the Justices of Peace to put in Execution the Statute 3 *H. 6. c. 9.* of forcible Entries, upon an Affidavit that the Entry was by Force, and that the Justices refused to proceed. The Court said that the Writ had been often granted on the same Reason in other Cases, and a Writ was granted absolutely; *Hilary 2 Geo. 1.* a *Mandamus* was granted, directed to the Justices of *Derby*, to put in Execution the Statute 1 *Geo. 1. c. 14.* to Order the County Treasurer to pay Constables Expences, and extraordinary Charges; *Mich. 6 Geo. 1.* a *Mandamus* was sent to the Justices of *Cheshire*, to reimburse the Surveyors of the Highways according to 3 & 4 *W. & M. c. 12.* *Hil. 8 George*, a *Mandamus* was granted to order Alderman Barker to

Mandamus
to the Justices
to put in Ex-
ecution the
Statute 8 *H. 6.*
of forcible
Entries.

to make a Warrant of Distress for the Poor's Rate; *Easter 8 George, Mandamus* was sent to Sir *Thomas Clarges*, to pass the Overseers Accounts according to 43 *Elizabeth*. *Easter 8 George, Mandamus* to the Justices of *Nottingham* to appoint Overseers in an extraparochial Place. 1 *Vent.* 187. *Comberb.* 203. *The like Writ* had been granted *Mich.* 2 *Geo.* 2. the King against *Long*, *Comberb.* 483.

Easter, first of *George the Second*.

The King against *Wood*.

Exception to
an Indict-
ment for a
forcible Entry,
in not alledg-
ing it to be
Prosecutor's
Freehold,
over-ruled.

292. **T**HE Defendant was indicted for a forcible Entry, and an Exception taken to it, because it was not laid that the Premises set forth in the Indictment were the Prosecutor's Freehold, for the Statutes 8 *H.* 6. and *R.* 2. extend only to Freeholds; the want of which was alleged to have always been fatal in an Indictment of this Nature, particularly in the Case of the King against *Sharrington*; for perhaps it may only prove an Estate at Will, to which none of the Statutes extend, 1 *Vent.* 89; and it was answered that this Exception would be just if the Indictment was brought on the Statute, but that in
In-

ements brought at Common Law it not necessary; so is the Case of the King against *Dier*; and the Court was of the same Opinion, and the Exception was over-ruled.

Michaelmas, twelfth of *George*.

The King against Sir William Lowther.

3. **M**Oved for an Information in nature of a *Quo Warranto* against the Defendant, to know by what Authority he claimed to have a Coney Warren; several Affidavits were made of the Prejudice the Warren was to several Persons in the Neighbourhood, and likewise that it extended a-cross the King's Highway, which was the Circumstance chiefly insisted upon to prevail with the Court to grant the Information. *But the Court denied the Motion*, because it was a Matter of a private Right, and therefore proper to be tried in another manner.

Information for a Matter of a private Right denied.

The same Term.

The King against Kirby.

94. **M**Oved to quash an Indictment found against the Defendant for taking away Conies.

Indictment quashed nisi for taking and carrying away Conies.

taking and carrying away Conies contrary to the Statute, upon two Exceptions.

1. This is not a Matter cognizable before the Sessions, because by the Statute 22 & 23 Car. 2. one Justice upon Complaint may correct such an Offence as is here charged, but the Sessions have nothing to do with it, except it comes before them by Appeal.

2. The Offence is laid to be done in *Killinghall* aforesaid, but no Mention is made before of *Killinghall*. *Cro. Car.* 464. *Chomley's Case*. The Defendant was indicted for assaulting *A. B.* in the Church of *Shoreditch* aforesaid; an Exception was taken in Arrest of Judgment, because the Offence was alledged to be done in the Church of *Shoreditch* aforesaid, and *Shoreditch* was not named before; and there the Court held the Indictment to be void. And here a Rule was made to shew Cause.

Hilary, twelfth of George.

The King against Buck.

Indictment
for killing a
Hare with
Greyhounds,
quashed.

295. **T**HE Defendant was indicted for killing an Hare with Greyhounds contrary to the Statute. Upon Motion this Indictment was quashed, because

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cause the Act of Parliament, which makes this an Offence, does not give a Remedy by way of Indictment, but appoints a particular Method of Punishment in a Summary way before a Justice of Peace.

The same Term.

The King against Millet.

296. **M**R. *Bonwick* moved to quash an Indictment for keeping a Gun to destroy the Game, not being qualified, upon this Exception, that the Indictment concludes contrary to the Statute; but the Statute orders the Offender to be punished, not by Indictment, but a Justice of Peace by his own Warrant may cause the Gun to be seized, and fine the Offender. Shew Cause.

Indictment for keeping a Gun not qualified, quashed, unless Cause.

Trinity, twelfth of George.

In the King's Bench in Middlesex.

Hill against Eateman.

297. **T**HE Defendant *Bateman* being a Justice of Peace, had convicted the Plaintiff for destroying Game; it

Action for false Imprisonment lies against a Justice for a Commitment to Prison, on

a Conviction
for destroying
the Game,
without en-
deavouring to
levy the Pe-
nalty on the
Offender's
Goods.

was proved the Plaintiff had Effects of his own which might have been distrained, and were sufficient to answer the Penalty he had incurred, yet the Defendant sent him immediately to *Bridewell*, without endeavouring to levy the Penalty on his Goods. And an Action of Trespass and false Imprisonment being brought against *Bateman* for this Commitment, the Chief Justice was of Opinion the Action well lay; and it was agreed where Actions of this kind are brought against Justices of the Peace, they are obliged to shew the Regularity of their Convictions; and the Informations laid before them, upon which the Convictions are grounded, must be produced and proved in Court.

The same Term.

The King against Chipp.

Conviction
on Informa-
tion for kil-
ling Hares,
affirmed after
several Ex-
ceptions.

298. **T**HE Defendant was convicted upon the Statute 4 & 5 W. & M. c. 23. upon an Information for killing three Hares, not being duely qualified.

Mr. *Filmer* for the Defendant took several Exceptions to the Conviction.

The *First Exception* was, That the Information which was set forth in the Con-

viction,

viſion, was inſufficient to warrant the Con-
viſion, for the Information only recited
that he was an inferior Tradesman, but
did not ſhew that he had waſted his Sub-
ſtance, or that he was a diſſolute Perſon,
which are the Words of the Statute; and
therefore it did not appear by this Convic-
tion that the Defendant was ſuch a ſort of
Perſon as was intended by the Statute, for
he might be an inferior Tradesman, and
yet have ſufficient Eſtate to qualify him
to hunt, &c.

Second Exception; That it was not any Salk. 212;
where ſet forth in the Conviction that the
Defendant did unlawfully hunt, and for
any thing that appears in this Conviction,
the Defendant might have brought the Hare,
and hunted and killed it in his own Yard,
which would have been lawful.

Third Exception; That the Conviction Bull. 177:
ſet forth that Information was given to
J. P. *Juſtice of the Peace*, but did not ſay
then a Juſtice; he might be a Juſtice at
preſent, and not at the Time of the Infor-
mation.

But the Court over-ruled all the Excep-
tions, and to the firſt they ſaid, That the
Statute was in the Diſjunctive, *viz.* inferior
Tradesman or diſſolute Perſon, and there-
fore ſaying the Defendant was either of
them was ſufficient, for he by that comes

under the Description of the Person meant in the Statute, and as such the Act prohibits him to hunt, and the Restraint in the Act makes the Offence. To the second Exception the Court said, The Statute forbids such Persons as the Defendant to *hunt at all*, and made it criminal for such Person to hunt generally. And in this Statute there is a *Distinction betwixt lawful and unlawful Hunting*, as there is in the Statute of Deer-Stealers, and they agreed that in a Conviction for Deer-Stealing, it must be set forth that the Defendant did unlawfully hunt, but in the *present Case it need not*, because there is *no such Distinction*.

To the third Exception the Court said, That the Conviction set forth that Information was made to *J. P.* being one of the Justices, &c. which must be intended he was one at that Time, and it was sufficient without saying *then*; and they affirmed the Conviction.

Easter, thirteenth of George the First.

The King against Wyat.

Conviction
for hunting
and killing
with Grey-
hounds, con-
trary to
5 Ann. af-
firmed on De-
murrer.

299. **T**HE Defendant was convicted on the Statute 5 *Anne*, for hunting and killing Game with two Greyhounds;

on Demurrer, Mr. *Fazakerly* excepted to it, because the Offences are distinct, and there ought to have been several Convictions for killing with each Greyhound, but instead of that, this is one intire Conviction for five Pounds. This was over-ruled as an immaterial Exception.

2. The Statute appoints that one Half of the Penalty assessed on the Conviction of the Party, shall be distributed to the Poor of the Parish, and by what appears no Distribution can be made in this Case, for no Parish is mentioned upon the Record where the Fact was done, but only a Vill.

Mr. Justice *Fortescue*: There need be no Distribution set forth on the Record, for the Conviction is compleat without it.

Mr. *Wilbraham* on the other Side: This Objection would hold if the Offence had been done in an extraparochoial Place.

Mr. Justice *Fortescue*: If this Vill mentioned in the Record is a Parish, then the five Pounds shall be distributed to the Poor living there; if it is not a Parish, then the Informer shall have the whole.

3. This Conviction appears not to be founded on a legal Evidence, for the Person on whose Testimony the Conviction is taken, is named to be of the Vill of *Mothram* where the Fact was done, and consequently he hath an Interest in the Convic-

tion, because one Half of the Penalty is to go to the Poor of the Parish, so it is plain he is concerned in Point of Interest within the Meaning of this Act; and it is like the Case in a Suit for Tithes in the Exchequer, where if a Man is said to be of the Parish, his Deposition is rejected.

But *by the Court*: There is no Weight in this Exception.

And *Chief Justice* said, it is of no Moment to say the Witness is an Inhabitant of the Vill where the Fact was done, for he might be a Servant, and then his Evidence will support the Conviction below; and as to the second Exception we will intend the Parish and Vill to be Coextensive, and the Conviction was affirmed.

N.B. If the Conviction be made upon the Evidence of the Informer, who is intitled to any Part of the Penalty, the Conviction is void, because it is founded upon illegal Evidence, which Point has been resolved more than once.

Mich. first of *George* the Second.

The King *against* Wicker.

Conviction
for keeping
Nets and
Dogs, on De-
murrer was
affirmed.

300. **T**HE Defendant was convicted for keeping Nets and Dogs to de-
stroy

to destroy the Game, in the Penalty of five Pounds.

Sir *John Strange*, on Demurrer, took these Exceptions, viz. 1. The Defendant is said to be of the Parish of *Buckingham*, and kept the Nets and Greyhounds for the Destruction of the Game in the Parish of *Westwickham*, but does not say that he kept the Nets and Greyhounds in *Westwickham*, which is a material Fault in the Conviction, because the Forfeiture goes to the Poor of the Parish where the Offence is done, and in this Conviction the Defendant is charged with two Offences, viz. Keeping Nets and Greyhounds, but the Conviction is single for five Pounds only, whereas he should be convicted for each; and the Objection to this Defect in the Conviction is of some Force, because the Defendant cannot know which of them to plead in Bar. The Court over-ruled both these Exceptions, and the last was set aside on the Reasons given in the Case of the King against *Lingoe*, lately in this Court.

3. The Conviction does not adjudge the Defendant unqualified. But the Court held the Disqualification was charged home against the Defendant in the Information; for the Justices adjudge him guilty of the Premises charged therein. Conviction affirmed.

Mich.

Mich. second of George the Second.

The King *against* Stone.

Conviction
for Deer-
Stealing
quashed, be-
cause the
Informer was
the Witness.

301. **T**HE Defendant was convicted for Deer-Stealing, and upon Demurrer an Exception was taken to it, that the only Witness was the Informer, who was intitled to a Part of the Reward or Penalty; and for this Reason the Court set it aside. In *Mod.* 3. 114. *Jenings against Hankeys*, the Defendant was convicted on the Statute of *Car.* 2. by the Oath of the Informer, and this Exception was taken. But it was answered, the Statute gives Power to convict on the Oath of a credible Witness, and such is the Informer. Upon the Statute for suppressing Conventicles, the Informer who had Part of the Penalty, was allowed a good Witness, and there the Court put the Case of a Man robbed, who swears for his own Interest against the Hundred, and would not quash it.

Easter, tenth of George.

Shipton Qui tam, against Hobson.

Information
on the Game
Acts after
Verdict, held
good.

302. **A**N Information was exhibited against the Defendant upon the Game

Game Acts, viz. 5 *Anne*, c. 14. §. 2. 9 *Ann.* c. 15. 8 *Geo.* c. 19. and there were two Counts in the Information, one for five Pounds for keeping a Gun, and another for ten Pounds, for killing two Partridges; a Verdict was found for the Prosecutor, as to the five Pounds mentioned aforesaid, and as to the Residue, for the Defendant. And now the Defendant moved in Arrest of Judgment, because the Finding of the Jury for the Prosecutor, as to the five Pounds, was uncertain, for it did not shew particularly upon what Count it was found, and the Count upon which it was found ought to be specified, for perhaps it may be found upon a Count which is insufficient; but unless it appears upon what Count, the Defendant may take an Advantage of the Insufficiency; and by this Verdict it does not appear whether the five Pounds was given for killing the Birds, or keeping the Gun.

By the Court: The Finding doth sufficiently ascertain it to the Count which is for the five Pounds, and the Plaintiff had his Judgment.

Mr. Justice *Fortescue* said, This is the same thing as if twenty Pounds had been demanded upon several Bonds, and the Jury had found for the Plaintiff as to five Pounds Parcel of the twenty Pounds; and for the Defendant as to the rest; this Finding

ing would have been good without ascer-
taining upon which of the Bonds the five
Pounds for the Plaintiff was found.

Hilary, twelfth of George.

*On a Trial at Bar in the Court of King's
Bench.*

Anonymous.

Information
against a Ju-
stice, for re-
ceiving Deer
stolen.

303. **A**N Information was exhibited a-
gainst the Defendant, for that
A. B. and other Malefactors, did kill Deer,
sometimes five, six, or eight in a Week,
amounting in all to eighty-one Deer in
Yardley Chase, belonging to the Earl of
Northampton, and that they did fly to *Ol-
ney* in *Buckinghamshire*, the Seat of the De-
fendant, and that he being a Justice of the
Peace did receive Part of the Venison, and
gave them Money for it, knowing it to be
stole, and in Breach of his Office did ne-
glect to prosecute and bring the said Offen-
ders to Justice, in Contempt of our Sove-
reign Lord the King, his Crown and Dig-
nity.

The several Facts charged in the Infor-
mation, were proved fully upon the De-
fendant; and in another Term the Defen-
dant

defendant received the Judgment of the Court, and was fined four hundred Pounds.

Mich. thirteenth of *George*.

The King *against* the Justices of the Peace of Cardigan.

304. **A** MOTION was made to quash a *Certiorari* which had removed some Orders made by the Justices concerning the Highways, for that by the Statute 3 & 4 *W. & M. c. 12.* 1 *Anne, c. 18.* a *Certiorari* does not lie to remove any *Indictment* out of the proper County, but all Proceedings, touching the Highways, are to be determined finally by the Justices in the County. And a Rule was made to shew Cause.

Certiorari does not lie to remove an *Indictment* concerning the Highways out of the proper County.

The same Term.

The King *against* The Inhabitants of Ashby in the County of Leicester.

305. **M**OTION for Leave to file an Information against the Defendants for not repairing the Highways, being in a very ruinous Condition.

Information for not repairing the Highways.

Mr.

Mr. Justice *Fortescue* said, That he had known Informations granted on this very Occasion; and there is great Reason that it should be so, because it would be a Means, as the Expence is greater in the Crown Office, to compel them to take Care of their Roads, for the Indictments at the Assizes have seldom the Effect to oblige them to repair, the Fine for the most part being small; besides those Indictments cannot be removed into this Court.

Mr. Justice *Reynolds* thought the Act of Parliament had retained the Court to grant an Information on this particular Instance; however they made a Rule to shew Cause.

Trinity, first of *George* the Second.

The King *against* The Inhabitants of Harrow.

No new Plea to an Indictment for not repairing the Highways.

306. **T**HEY were indicted for not repairing their Highways. To this Indictment they pleaded a private Way; now they moved to plead the general Issue, Not Guilty, which the Court refused.

Mick.

Mich. first of George the Second.

The King *against* Hubert.

307. **T**HE Defendant was obliged to repair an Highway in *Norwich*, by reason of his Tenure, and for not repairing this way, an Information was moved for against him, and a Rule was granted to shew Cause, and afterwards the Rule was made absolute. *Show.* 116. 1 *Sid.* 140.

Information granted against Defendant, for not repairing an Highway.

Note; For the Form of a Conviction, by the View of a Justice of Peace, for not repairing the Highways, which he is to return to the next Sessions, and the Order thereupon, see *Keyling* 33.

Hilary, first of George the Second.

The King *against* Eachard.

308. **A** MOTION was made to quash an Indictment, but opposed, because it related to the Highways, wherein the Defendant was charged with not working for the Amendment of the Ways of the Parish, which are not the Highways; and *Ways generally* will not strictly comprehend the Highways. In *Salk.* the Queen *against* Jones,

Indictment for not working for the Amendment of the Ways, quashed.

Jones, 379. the Defendant was indicted for a Cheat, and the Indictment was quashed, though it was for those Artifices which are not of the common Sort, because it did not appear to be a Cheat set forth with false Tokens. Another Exception was, that the Statute *Car. 2.* prescribes a different manner of Punishment, to be inflicted by the Justices of Peace; and for these Reasons the Indictment was quashed.

Michaelmas, eleventh of *George*.

The King *against* Blackseller.

Indictment
for suffering
the High-
ways to be
out of Repair,
held ill.

309. **T**HE Defendant, a Surveyor of the Highways, was indicted for suffering the Highways to be out of Repair. Upon Demurrer, the Indictment was held to be ill laid, for there being a Statute which provides a particular Remedy in such a Case, the Defendant could not be indicted. 1 *Vent.* 63. the King *against* *Millard*, Hil. 2 *George* 2. the King *against* *Pensax*, Hil. 2 *George* 2.

Easter,

Easter, first of George the Second.

The King against Mash.

10. **M**OTION to quash an Indictment, and the Offence charged therein was for digging a Ditch a-cross the Way, in a certain Meadow-Ground adjoining to the Highway. Two Rules were laid down whereby to justify the Motion.

Indictment for an Offence done near the Highway, denied to be quashed on Motion.

If this had been an Offence done in the Highway, or if it had been charged to be a Nuisance, in either of these Cases the Rule was, It could not be moved to quash it; but from the very Nature of the thing as laid in the Indictment, it cannot be any Offence done in the Highway, and therefore this Case falls not under either of those Rules, and the Motion is proper, *though quashing be an Act of Favour.*

But the Court held, That the Fact was well described, and if you will bring the Merits before us, you may demur to the Indictment.

Easter, eleventh of George.

The King against Norwall.

11. **T**HE Defendant was indicted for refusing to exercise the Office of Surveyor of the Highway, not good.

Indictment for refusing to be Surveyor of the Highway, not good.

Surveyor of the Highways, being legally chosen according to the Statute 3 & 4 W. & M. and the Indictment was quashed, unless Cause. 1 Vent. 107, 344.

Michaelmas, twelfth of George.

The King against Barnsey.

Order of Justices to repair a Bridge quashed, not said to be a publick Bridge.

312. **T**HE Justices made an Order on the Defendant to pay the Proportion of the Charge assessed towards the Repairs of a Bridge; he moved to quash it, because the Order does not say in what County it is, nor that it is a publick Bridge. Quashed.

Trinity, twelfth of George.

Anonymus.

Order removed by *Certiorari* held bad, for a Variance.

313. **I**N the Case between the King and the Trustees, for repairing the Road between *Market-harborough* and *Loughborough*, in the County of *Leicester*, appointed by Act of Parliament, some Orders of theirs being removed by *Certiorari*, a fatal Exception was taken to them, That they had taken Notice in the Orders of an Appointment

ment by an Act of Parliament to repair the Roads between *Harbrough* and *Loughbrough*, but had omitted to insert *Market*, which shewed they had no Authority, and was held a Variance. *Salk.* 452.

Hilary, third of *George* the Second.

The King *against* *Oakley*.

314. **M**R. *Wheat* moved for a *Mandamus* to be directed to *J. S.* a Justice of the Peace, to put in Execution the Statute 5 *Geo.* 1. c. 12. §. 1, 2. which enacts, "That no Waggon, travelling for Hire, shall be drawn with more than six Horses, on Forfeiture of all the Horses above six, with all Accoutrements, to the sole Use of him who shall seize, and the Person who shall seize shall deliver the Horses to the Constable of the next adjoining Town, who is required to keep them safe, till the Person who seized shall make Proof on Oath before some Justice of the Peace of the Offence committed, and the Justice shall issue out his Precept to such Constable immediately to deliver the Horses so forfeited to the Party who seized, for his sole Benefit." Now the Justice would

Mandamus, unless Cause, to a Justice to put in Execution an Act of Parliament.

not issue out his Precept to the Constable to deliver the Horses seized, and therefore the Man who had seized made this Application for a *Mandamus*.

But *the Court* thought it should appear to them that Oath had been made before the Justice of the Offence committed, for they could not force him to issue his Precept; but singly to administer the Oath, Rule to shew Cause.

Hil. eighth of George the Second.

St. Mary Callender against St. Thomas.

Apprentice to a Certificate Man, who afterwards served the Office of Constable, held to gain a Settlement.

315. *WILLIAM West*, settled in *St. Thomas* in *Winchester*, came into the Parish of *St. Mary Callender* in *Winchester*, in 1719, under a Certificate from *St. Thomas*, and in 1721 was chosen and legally placed one of the Constables of the City of *Winchester*, and served the Office for a Year, and lived during that time in *St. Mary Callender*, and executed his Office through the whole City; in 1727 he took *Joseph Talmash* his Apprentice; and the Question was, Whether the Apprentice gained a Settlement by serving his Master in *St. Mary Callender*, where two Justices had removed him; but the Sessions on Appeal discharged their Order.

Mr.

Mr. Serjeant *Eyre* insisted, That the said *William West*, by serving this Office of Constable for one Year, had gained a good Settlement in *St. Mary Callender*, and thereby avoided his Certificate, and consequently the Apprentice, agreeable to the Case of *Karsington* in *Oxford*, and *Holy Trinity* in *London*, which was in *Hilary 2 George 1.* where a Certificate-Man being chosen Tithingman, served the Year, though not sworn in till Half the Year was expired, which the Court held a good Settlement; for the Parish by choosing him manifested their Opinion of his Sufficiency.

That the 3 & 4 of *W. & M.* of annual Offices, is the first and strongest Act, *Hil. 7 Geo. 1.* the King against the Inhabitants of *Mitcham*, Collector of Births and Burials, a good annual Office; Queen against the Inhabitants of *St. Mary's Reading*, Warden a good annual Office; and it was said in that Case, that a Collector of the Land Tax would do.

The 3 & 4 *W. & M.* has been favourably expounded.

Renting ten Pounds *per Annum* in two Parishes, *Michaelmas 9 George 1.* the King against the Inhabitants of *Broxford*.

Admitted it must be an annual Office, but not necessary to be parochial, if it extends only to an Hamlet, it will do; the

present is a larger Office than necessary for a Qualification, therefore the Order of Sessions should be quashed.

Mr. *Chute* on the other Side agreed, if the Question was on the executing an annual Office only, and the Certificate Person's Settlement was in Question, it would be against him, agreed the Cases as cited on the other Side, and that *St. Mary's Reading*, and *St. Lawrence, Hilary 9 Anne*, was very strong; but the Question arises not on the 3 & 4 *W. & M.* but on the Construction of the 12th of *Queen Anne*, which was intended to prevent the Settlement of Apprentices to Certificate Persons. 9 & 10 *W. 3.* is the Act which settles this, unless superseded by the 12th of *Queen Anne*.

Exception; not resident in the Parish for one whole Year, but that was right in the Order; then 12 *Anne* declares the Apprenticeship of a Certificate-Man shall not gain a Settlement; the first Point is, Whether 9 & 10 *W. 3.* requires the Office to be parochial; the 3 & 4 *W.* introduces those Offices in lieu of Notice in Writing; then the 9 & 10 *W.* comes to settle some Doubts arising on the former Act, but did not intend to defeat a Certificate, unless the Officers of the Parish had Notice. The Word *Town* in the Case of *St. Mary's Reading*, was much relied

relied on by Lord *Parker*, and the Person not a Certificate-Man.

The Question is solely on 9 & 10 *W.* which he argued should be a parochial Office. The Warden in *St. Mary's Reading* is in Nature of a Tithingman, which is a Hamlet or Parish Officer; insisted in this Case the Parish was to be concluded without their Privy, and that this Person might have been removed, and therefore was not such an Officer as the Act intended.

Lord *Chief Justice*: On the 3 & 4 *W.* 3. the Point is what shall be equivalent to Notice in Writing; on this Act a publick annual Office, though not parochial, has been held sufficient.

Mr. *Chute*: The Certificate Act 9 & 10 *W.* makes the Person irremovable till actually chargeable; so that Notice is nothing in that Case, and here the Person is appointed, not by the Parish, and yet as soon as the Year expired may be absolutely concluded; which was hard.

To which Mr. Serjeant *Eyre* replied: These Acts have been all liberally expounded, and that Renting ten Pounds a Year in different Parishes was a good Settlement, and that a parochial Office was no where mentioned in the Acts, and that the Case of the Tithingman was of a Certificate Person.

Lord Chief Justice said he would look into the Cases, thought if the Cases had not been so determined he should think a parochial Office intended, but he should not be for shaking the Authority of them.

Mr. Justice *Lee* thought the Case of a Certificate-Man not to be distinguished, and if it should be construed a parochial Office, to avoid a Certificate, it would be hard; for as he comes into a Parish against their Will, it is not likely they will appoint him to a parochial Office, and so he will never gain any new Settlement.

Mr. Justice *Probyn*: A Church-Warden named by the Parson, and a Parish Clerk named by the Parson, both good; whence he argued, that a Parish might be concluded, though not by their own Act.

Mr. Justice *Page*: If this Office should prevail, then perhaps he would gain a Settlement in ten Parishes at once, for over so many his Office of Constable may extend; this Office is given him by the Corporation, the Parish no way consenting, and it would be hard they should be concluded by it; therefore it was adjourned, to look into Cases, and afterwards in *Easter* Term following Mr. *Chute* said, That the Conclusion of the Justices in this Order is wrong; he desired to consider the Series of the Statutes as they stand; on the 13 & 14 *Car. 2.*
a Per-

a Person could not be removed from his Freehold, and there are Cases whereby a Person may gain a Settlement out of all the Acts.

The Statute of *James 2.* requires Notice.

The 3 & 4 *W. & M.* ascertains the Measure of that Notice, and in *Abbots Langley* and *Aldenham*, it was held that nothing amounted to it.

The 8 & 9 *W. 3.* amounts to an Estoppel against the Parish giving a Certificate.

The 9 & 10 *W. 3.* narrows the Notice, and Notoriety was not the Question; a Certificate signed is Notice, and Renting ten Pounds a Year must intend that such a Person is dispaupered.

The 3 & 4 *W. & M.* is Executing some annual Office in such Parish, but here he was City Officer, and as much at large as the Reve of a Manor.

As to the Case of *Karlington* and *Trinity*, a single Case is not to weigh against the general Reason of the Statutes.

Sir Thomas Abney: Renting Land in two Parishes, amounting to ten Pounds, will avoid a Certificate, the King against the Inhabitants of *Broxford*, *Mich. 9 Geo. 1.* the King and the Inhabitants of *Melton*, *Easter 4 Geo. 2.* marrying a Copyholder.

Admitted in the Case of *Karlington*, the original Order was quashed, because no
Com-

Complaint, but the Court first gave Opinion on the Merits.

Mr. Justice *Lee*: Upon the Argument of that Case the Court was strongly inclined that it was a Settlement, but being a new Case, a second Argument was ordered, in which Lord *Parker* directed the Counsel to speak to that Point, Whether he was legally placed in the Office, because of the Point of his not being sworn in till he had served Half a Year; but in another Term the original Order was quashed, because Want of Complaint, and nothing more, was said of that Point.

Lord *Chief Justice*: The Question is, Whether the Apprentice gained a Settlement by serving this Master, which immediately depends on the Statute 12 *Anne*, c. 18. and the Question is, Whether the Master by any thing has discharged himself of this Certificate? The first Act relating to Certificates is the 8 & 9 *W. 3.* c. 30. then it was thought reasonable that some Acts should give a Certificate-Man a Settlement, or make him capable of it, which is the Reason of the 9 & 10 *W. 3.*

The next is on the Statute 3 & 4 *W. & M.* on the Words annual Office, there seemed to me to be a Difference between a Certificate-Man and others, because not removeable till actually chargeable.

The

The Case of *Karlington* being now more fully stated, appears to be on a Certificate, and the Point directed to be spoken to, whether legally placed, shews the Court had no Doubt but it would gain a Settlement.

The 3 & 4 *W. & M.* ascertains what Notoriety shall be.

Office in any Town or Parish is not restrained to Parish Offices; the Word *Town* being dropped in the Act makes no Difference, for it must be understood a Town in which a Person can gain a Settlement.

Thought, on the Case of *Karlington*, the Construction of the Acts was plain, and that the Master gained a good Settlement in the Parish to which the Certificate was given, and consequently the Apprentice.

Mr. Justice *Page* agreed.

Mr. Justice *Probyn*: The whole City joined in the Election of this Constable, and consequently the Parish in which he lived, could not see how this could be taken different on Certificate, from the 3 & 4 *W. & M.* the Constable is not a parochial Officer, yet gains a Settlement; so Tithingman, Reve, &c.

Mr. Justice *Lee*: Courts have always extended as far as they could in Favour of Settlements, and the Case of *East Woodbay* and *Burclear* was as cited, the Court said,

said, that the 9 & 10 W. 3. was not an explanatory Act, but a new Law, and has enlarged the Case of a Certificate-Act, and the Case of *Karsington* was expressly to this Point. It is not necessary to be a Parish Officer, but Executing any annual Office in a Parish; no Reason for putting any Restriction on a Certificate-Man, but the same in his Case as in that of any other Man.

The Court made the Rule absolute to quash the Order of Sessions, which had discharged the Order of two Justices, who had removed the Pauper to *St. Mary Calender*, and affirmed the Order of the two Justices.

Hil. sixteenth of George the Second.

The King *against* The Township of Stansfield in the Parish of Heptonshall.

Certificate-Man by Purchase gains a Settlement.

316. **O**RDER of two Justices to remove *Jonathan Barret*, his Wife and Children from *Stansfield* to *Spotland*; and upon Appeal the Sessions discharge this Order, and state specially, That *Jonathan Barret* the Father was last legally settled at *Stansfield*, and came to *Spotland* in *Lancashire*,

cheshire, by Virtue of a Certificate, That while he was there Sir *Richard Asheworth* let him for nine hundred and ninety-nine Years, twenty square Yards of Land, and he built upon it, and in 1730 *Jonathan Barret* assigned to one *Horseball* for Sixteen Pounds ten Shillings, and Sir *Richard Asheworth* leased another Croft to *Horseball*; that *Barret* having Money left to him by an Uncle, agreed with *Horseball* to re-assign to him for forty-seven Pounds; that in 1738 *Barret*, by way of Mortgage re-assigned to *Horseball* for forty-five Pounds; that *Barret* and his Family were sent by a Pass from *Manchester* to *Stansfield*, and before any Appeal to the Pass two Justices removed him. In Support of the Order of Sessions it was argued, that these Persons were settled in *Stansfield*; secondly, if not, yet there ought to have been an Appeal from the Pass Order. That no Settlement could be gained by this Purchase appears from the 9 & 10 *W. 3. c. 11.* which is explanatory of the 8 & 9 *W. 3.* and fixes it to two Acts only to gain a Settlement, which excludes this, which is the Act of the Party only.

On the other Side it was argued, That though he mortgaged the Premises, yet that does not make any Difference, because he lived in it three Years before, and there is

is not any Pretence of Fraud in taking an Estate for so long a Term; besides no Fraud is stated; but is it stated that the Premises are worth sixty-three Pounds to be sold? this would be a clear Settlement in *Spotland*, in the Case of a Person not certificated.

If an Estate descends to a Certificate-Man, it gains him a Settlement, because it is by Operation of Law, and not by an Act of his own; and as this Statute has been laid open in Cases of Descents, it ought to be so in Cases of Purchases.

It is impossible to imagine that the Legislature intended these Passes should be conclusive, because by the 13 & 14 *Car. 2. c. 12.* in cases of Removal must be two Justices.

So in Passes to remote Places very inconvenient, if when sent the Place is mistaken.

Lord *Chief Justice*: The Sessions have not only stated the Merits, but this Pass-Order, and have adjudged the Settlement at *Stansfield*. But it does not appear whether the Adjudication was upon the Merits, or for want of an Appeal to the Pass. I take it that the Statute 8 & 9 *W. 3.* has not been so strictly adhered to as has been contended for. For it has been held to gain a Settlement in Descents, Devises and Purchases. On the 13 & 14 *Car. 2. c. 12.* the

the Construction has been, that let the Value be what it will, a Person cannot be removed from his Own; and it seems to be the same upon the Certificate Act, for if he is not removable within the 13 & 14 *Car. 2.* he is not removable on the Certificate Act.

Mr. J. *Wright* thought this not a new Case, and that it had been settled that a Certificate-Man by Purchase gains a Settlement, and cited the King against the Inhabitants of *Burclear*, *Easter 5 Geo. 1.* and *Mursley and Grandborough*, *Trinity 4 Geo. 1.*

Mr. J. *Denison* thought it had been determined upon the Merits that a Certificate-Person shall gain a Settlement by Purchase, in the Time of his late Majesty; and though the 9 & 10 *W. 3.* is an explanatory Law, yet this Case is the same as on the Statute 13 & 14 *Car. 2.* perhaps there were other Cases than the two that that Statute intended to prevent, but it seems to be *Causus omisus*, and so intended by the 9 & 10 *W. 3.*

Trin. eighth and ninth of *George the Second.*

Barton Tuff against Happersburgh.

317. **A** Poor Woman, after the Death of A Widow
her Husband, removed from after her Husband's Death
Barton removes from

his Settlement with their Daughter 13 Years old, to an Estate of her own, held that the Daughter thereby gained a new Settlement under the Mother.

Barton Tuff, the Place of the Settlement of the Husband, to a Copyhold Estate of her own at *Happersburgh*, and took with her her Daughter of thirteen Years of Age; and the Question on an Order specially stated was, Whether the Daughter by this derived a new Settlement under her Mother.

It was resolved by the Court, that there was not any Difference between a Settlement derived from the Father or Mother; but wherever a Child would have gained a Settlement under the Father, if he had been living, such Child will do the same under the Mother; and the Court quashed the Order of Removal to the Settlement of the Father, and that of the Sessions confirming the same.

Trin. thirteenth of *George* the Second.

St. Neotts against St. Cleer.

Pauper settled by being seised of a Freehold, though he did not live upon it for forty Days together.

318. **A** Pauper at *St. Neotts* was hired, and served one Year, and returned to *St. Cleer*, where he had a joint Freehold with his Mother, and lived there backwards and forwards, but not forty Days at a time, but more in the whole.

Two Justices remove him to *St. Cleer*, and on Appeal Sessions discharge that Order; and on a *Certiorari* brought in the King's

King's Bench it was moved to quash the Order of Sessions, and in Support of it argued that he had sold the Estate three Years ago, and though he could not be sent from his Estate, yet by selling it he had parted with that temporary Right.

Court said, This depended on 13 & 14 Car. 2. and that forty Days Inhabitaney together was not requisite, and that the Pauper was well settled at *St. Cleer*, for there was a Time when by a Residence of forty Days he could not be removed from thence, therefore the Order of Sessions was quashed, and that of the two Justices confirmed.

Trinity, tenth and eleventh of *George* the Second.

Wodworthy against Farrington.

319. **A** Person possessed of a Lease of a Leasehold Cottage, for Years determinable Cottage gives no Settlement by living in it, unless the Person by taking out Administration becomes legally intitled to it.

on Lives, had two Sons; on his Death the eldest kept Possession, the other took the Goods as his Share, but no Administration taken out on the Expiration of the Lease. Two Justices made an Order of Removal, and an Appeal was to Sessions; and after the first Order, and before the Sessions, he took out Administration; the Sessions reversed

versed the Order of the two Justices; and the Question was, Whether living in the House, and not having Administration, gained a Settlement?

Court held it did not make a Settlement without administering, and the taking it after the Lease expired gave him none; therefore the Order of Sessions was quashed, and that of the Justices confirmed.

The same Term.

Buckley against Benhall.

Renting a
Wind-Mill of
fourteen
Pounds per
Annum, by a
Certificate-
Man, held a
Settlement.

320. **O**N a special Case stated, the Question was, Whether the Pauper, who was a Certificate-Person, had gained a Settlement by renting a Wind-Mill in Benhall of fourteen Pounds *per Annum*, (that is) whether it was a sufficient Tenement within the Statute, though it was admitted that in *Salkeld* 536, a Water-Mill was held a Tenement, and the Renting of it clearly a Settlement within the Statute. Yet it was objected in the present Case, that it appeared while he rented it under a Lease he gave Security for the Rent, and for the last three Years he was only Tenant at Will; now the Foundation is the Credit of the Party renting, and that fails in this Case.
On

On the other Side it was argued, that he that has Credit to give Security has Credit to pay Rent; the King against the Inhabitants of *St. Mary Guilford Hilary*, 8 Geo. 1. Renting a Wind-Mill generally was held good.

Court: No Difference what sort of Mill it is, but it will gain a Settlement, and the giving Security for the Rent does not alter the Case, and the Order of Sessions was quashed.

Hil. fourteenth of *George* the Second.

The Case of the Constables of Milborn Port.

321. **T**HE Constables were appointed at a Court-Leet the 7th of October, but not then sworn; the Leet being adjourned to the 27th, then the Constables went and were sworn before Justices of the Peace. Constables chosen at the Leet, afterwards sworn before Justices, held good.

Upon Motion for an Information, the Question was, Whether this was a good Swearing?

Sir Thomas Jones 212. *Salk.* 175. *Kitch. Tit. Court-Leet* 9. *Allen* 78.

Lord Chief Justice: In a Manuscript Report of Lord *Raymond* and another of Lord *King*, of that Case in *Salk.* it appears that the Court said, if a Steward neglects swear-

ing Constables at a Court-Leet and adjourns the Court, he must issue a Precept to them to be sworn before Justices, for they have Authority to do it as Conservators of the Peace at Common Law.

Therefore we are of Opinion that they were well sworn, which is the only Objection to them, and the Rule to shew Cause why an Information should not go, must be discharged.

Mich. second of George the Second.

Aldenham Parish against Tolchifter.

Pauper removed by Order of two Justices, is prevailed upon to return to the Place from which she was removed; upon which an Information is moved for against the Overseers of that Place to which she was sent, but Court refused to grant it.

322. *SIR John Strange* moved for an Information against the Overseers of the Poor of *Tolchifter*, upon this Case: *A. B.* a poor Woman, had been removed by Order of two Justices from *Aldenham* to *Tolchifter*, and the Overseers without appealing, from that Order prevail on the Woman for a Crown in Money, and a Pair of Shoes, to return to *Aldenham*, which she did accordingly, and was there delivered of a Child; this was said to be a Conspiracy to evade the Order, and that unless the Court would grant an Information, they had no other Remedy.

But

But by the Court: If an Information lies you may indict them, and refused to grant the Information.

And the *Lord Chief Justice* said, It was constantly held in Lord Chief Justice *Holt's* Time, that where a poor Person was legally removed, and afterwards, either by Stealth, or Contrivance of the Officers, got into another Parish, and was there delivered, the Child should be esteemed the Child of the Parish to which she had been removed, and not of the Parish where it was born.

The same Term.

The Case of the Parish of Luton.

323. **A** Poor Person had been removed by Order of two Justices; and upon Appeal to the Sessions of *St. Albans*, the Matter was solemnly debated by Council; and the Court being divided, the Justices were polled, and the Majority were for quashing the Order, and the Clerk of the Peace took the Minutes accordingly, and the Person concerned for the Parish of *Luton* had paid for the Order; the Court adjourned till five in the Afternoon, and upon the Justices meeting again without any Re-examination of the Matter, they

Justices in Sessions without a Re-examination, order the Clerk of the Peace to alter the Minutes; upon which it was moved that the Clerk of the Peace might answer the Matters of the Affidavit, but denied,

D d 3

ordered

ordered the Clerk of the Peace to alter the Minutes, and enter an Order for confirming the Order of the two Justices.

Upon this it was moved, That the Clerk of the Peace might answer the Matters of the Affidavit, having refused to draw up the Order first pronounced and paid for by the Parish.

But *by the Court*: The Clerk of the Peace has done his Duty, for he must obey the Justices in Sessions, and refused the Motion.

Easter, second of George the Second.

St. John Baptist *against* St. Saviour
Southover.

Order of Removal quashed, not setting forth Children's Ages.

324. **O**RDER of Justices for the Removal of a Man, his Wife and *B. C.* and *D.* their Children. Quashed by Sessions for want of Form.

And now Sir *John Strange* was to shew Cause why the Order of Sessions should not be quashed, and he took an Exception to the Order of Justices, that the Ages of the Children were not expressed, nor was the Place adjudged to be the Place of their last legal Settlement. Agreed the Order naught as to the Children, but good as to Father and Mother.

And

And by the Court the Order was confirmed as to the Father and Mother, and quashed as to the Children.

Mich. third of *George* the Second.

The King *against* The Inhabitants of Strifestead.

325. **T**O an Order of Removal Mr. *Hussey* took two Exceptions ;

A Certificate-
Person is not
removable till
he is become
chargeable.

1. That it did not appear, that the Justices who made the Order were Justices of the Peace for the County.

2. That it was set forth in the Order, that the poor Person was a Certificate-Person, and not said that he was become chargeable, but that he would be chargeable. Upon which a Rule was made to shew Cause, why the Order should not be quash'd.

N.B. The last Exception seems fatal, because by the express Words of the Act a Certificate-Person is not removeable till he is become chargeable.

Sessions Cases adjudged in the
Mich. fourth of George the Second.
The King against Lone.

Constable
 chosen by the
 Wardmote in
London, re-
 fusing to serve
 may be in-
 dicted.

326. **T**HE Defendant was indicted for not taking upon him the Office of Constable, being appointed by the Wardmote in *London*, and a Verdict generally was found for the King.

And now it was moved in Arrest of Judgment, that the Prosecutor had mistaken the Remedy, for he was to be amerced but was not indictable; that a Constable was an antient Officer at Common Law, and was appointable by the Leet. 8 Co. *Greesley's Case*. 1 Salk. 175. 1 Rol. Rep. 535. 1-2 Rep. 541. this is an Indictment before the Sessions, and the Justices have no Jurisdiction, but by the Statute 13 & 14 Car. 2. c. 12. where in Default of the Leet being held, the Sessions may appoint a Constable, but there their Authority is bounded. 1 Salk. 176. *Mich. 8 Anne*, the Queen against *Wheatcroft*, *Trinity 2 Anne*, *Hilary 10 Anne*, Queen against *Dacey*, *Easter 11 Anne*, *Trin. 7 Geo. 1*. King against *Beal*, *Hil. 8 Geo.* King against *Louvreign*, *Easter 1 George 2*, 1 Bulst. 174.

That the Time was laid to be on the 22d Day of *December* in the third Year afore-
 said

said, and no Year of the King mentioned before, and a Rule was made to shew Cause why the Judgment should not be arrested.

Afterwards in *Michaelmas* Term in the fifth Year of his present Majesty, Mr. *Reeve* came to shew Cause for the Prosecutor, and insisted that the Indictment well lies, for that this was an Offence against the Publick, and that there was not any other Remedy in this Court than an Indictment; that the Defendant was duely appointed, (which was admitted) by the Wardmote, who have not any Power of Fining, for they cannot so much as swear him, but being appointed by the Wardmote he is to be sworn by the Court of Aldermen. *Easter 8 Anne*, the Queen against *Jennet*, Indictment for refusing to take upon him the Office of High Constable, 3 *Keb.* 197, 230. Information for not taking upon him the Office of Constable, *Crawley's Case*, 1 *Cro.* 557, said in that Case, the Defendant should have been indicted, 1 *Syd.* 272. King against *Clerk*, *Mich.* 8 *W.* 3. *Comb.* 416. *Skinner* 669. admitted that 2 *Shore* 75, King against *Bettesworth*, seemed to be against this; Queen against *Dacey*, *Hilary* 10 *Anne*, appears to have been quashed, but not that it did not lie, but appears to be full of Faults, as an Indictment can be, being all in the Recital. As to the other Case, the King
against

against *Beal*, that was an Order of Justices discharging a Constable appointed at the Leet, and it was quashed, because Justices have not any Power to discharge a Constable appointed; said as to the rest of the Cases he could not find them.

Mr. Serjeant *Common* on the same Side: If an Indictment does not lie in this Case, there is no Remedy; the Leet indeed can swear in and fine, but the Court of Wardmote cannot swear in nor fine; but the Alderman whose Ward it is makes the Return to the Court of Aldermen, who can swear in. 5 *Mod.* 96. 1 *Syd.* 1 *Ventr.* 344. *Tremain's Entr.* 221. §. 6. These Cases he added to those cited by Mr. *Reeve*, to shew that Indictments had very frequently been brought in this Court. *Queen* against *Dacey*, *Hilary* 10 *Anne* does not appear to have been argued.

To all which it was replied, That it was not denied but that it was an Offence wherein the Publick was concerned; but it was denied, for that Reason, an Indictment would lie, unless there was no other Remedy at Common Law, and by the Statute of *Charles* an Amerciament is the proper Remedy; as to the Cases cited of an High Constable, that is different, for the High Constable is not subject to the Leet, but to the Quarter-Sessions, and not obeying that
Court

Court is a Contempt and indictable. That the Leet is the proper Place to elect a Constable. 1 *Rol.* 535. *Pl.* 12, 541. *Pl.* 5. 1 *Bulst.* 174. 8 *Co. Greesley's Case*, 1 *Salk.* 175. 13 & 14 *Car.* 2. c. 12. §. 15. gives the Jurisdiction to the Justices by Devolution, and no otherwise. *Salk.* 176. *Mich.* 8 *Anne*, Queen against *Wheatcroft*, *Trin.* 2 *Anne*, Queen against *Dummer* cited in the last Case. *Trinity* 9 *George*, King against *Beal*, *Hilary* 10 *Anne*, Queen against *Dacey*, *Easter* 11 *Anne*, an anonymous Case. Leet is the proper Place to elect and swear Constables, and that the Sessions cannot try a Custom, nor exercise any other Jurisdiction than the Act gives them.

Lord Chief Justice: Where a new Offence is made, and a particular Method of Punishment prescribed, that must be pursued, but where the Offence is an old one, and concerns the Publick, it is indictable. As to the Cases where only Rules have been obtained unless Cause, they were but trifling Authorities; but where Cases have been litigated, and Judgment therein given for the King, it is very strong, and was clear, this Indictment lies.

Mr. Justice *Page* was of the same Opinion, and said if a Person should be appointed by a Leet, who was absent, he is to go to the next Justice, and suppose he will

Sessions Cases adjudged in the

will not be sworn, perhaps there will not be another Leet in many Years; then this would be without Remedy.

Mr. Justice *Probyn* was clear, that it was an Offence against the Publick, and indictable.

Mr. Justice *Lee*: You may present a Nuisance at the Leet, and yet surely it is indictable. *Fletcher* against *Ingram*, 1 *Salk.* 175, was very clear it was an Offence indictable, and had not the least Doubt of it, therefore Judgment was given for the King.

Lord Chief Justice: As to the Cases cited by Mr. *Reeve*, where Indictments for this Offence were before the Court, and other Exceptions taken, and no Notice of this, he thought them good Authorities.

Note; This was an Indictment found at the Sessions at *Hicks's Hall*, and removed into this Court.

Easter, fourth of *George* the Second.

Goring Parish against The Parish of *Molesworth*.

Person hired
to navigate a
Boat, and
serves for a
Year, in pur-
suance of such

327. **O**RDER of Removal of a Man and his Children, and Order of Sessions confirming it. The Case appeared to

to be, that the Pauper was hired for a Year, and served the Year; the Person to whom he was hired lived at *Goring*, and kept a Boat which navigated from *Goring* to *London*, and plied at several Places specified in the Order, but find the Pauper was not forty Days in the whole Year at the Parish of *Goring*, but served out the Year on board the Boat; and the Question was, Whether this Hiring and Service would make a Settlement at *Goring*?

Hiring, on board the Boat, does not thereby gain a Settlement.

Mr. *Reeve*, to quash this Order, said, That here was an Hiring and Service, and notwithstanding the Words, That he had not served forty Days in the whole Year, must be meant forty Days together, which is not necessary; he admitted, that in the Case of a Boy hired to serve on Shipboard, it had been held not to gain a Settlement, but that was because no Settlement in the Parish.

Lord Chief Justice said, He could not distinguish the Case at Bar from the Case last mentioned.

Mr. Justice *Page*: The Reason why Parishes are made liable is because they are presumed to gain by the Party's Service.

And therefore the Order of Removal and the Order of Sessions were confirmed by the whole Court.

The

The same Term.

Staplesford Parish *against* Melton.

Renting ten
Pounds *per*
Annum, al-
though by a
Certificate-
Man, gains
a Settlement.

328. ORDER of two Justices for re-
moving *A. B.* from *Staplesford*
to *Melton*; Appeal to the Sessions; the Or-
der of two Justices quashed, and a special
Case stated to the Effect following, *viz.*
That the Husband of the Pauper removed
came into the Parish of *Melton*, and brought
a Certificate with him, that he rented a
Tenement of three Pounds *per Annum* in
Melton, and forty Pounds *per Annum* in
a Vill of the same, which Vill provides
for its own Poor.

Mr. *Reeve* took an Exception to the Or-
der of Sessions, which quashed the Order of
two Justices, that they had stated a good
Settlement gained at *Melton*, and yet that
they had adjudged the Contrary, for the Sta-
tute of *W. 3.* provides that the Renting
ten Pounds *per Annum* shall gain a Settle-
ment, notwithstanding such Certificate; and
a Rule was made to shew Cause why the
Order of Sessions should not be quashed.

Hilary,

Hilary, fourth of George the Second.

The King *against* The Inhabitants of
Hansworth in Staffordshire.

329. **T**HE Inhabitants of *Hansworth* *Certiorari*
had been indicted for not repair-
ing a Bridge, and the Indictment was re-
moved into this Court by *Certiorari*.
Certiorari lies to remove an Indictment against a Parish for not repairing a Bridge, but the Indictment being by way of Recital was quashed.

It was moved to quash this Writ, *quia*
erronice emanavit, and cited the Statute of
1 Anne, c. 18. §. 5. whereby it is enacted,
That no Writ of *Certiorari* should lie to
remove such Indictment; therefore *erronice*
emanavit. quashed.

Mr. Reeve on the same Side insisted,
That by the Statute no Presentment or In-
dictment for not repairing Bridges, or the
Highways at the End of Bridges, should
be removed by *Certiorari* out of the County
into any other Court.

Serjeant Corbet in answer said, That for
ought appeared, a Right might come in
Question, and then there was a Provision
by the Statute of *W. & M.* but he said they
were not prepared, and therefore prayed a
Day to shew Cause.

Afterwards, in *Easter* Term following,
on shewing Cause it was insisted that the
Statute

Statute of *Anne* being a penal Law, should not be extended to the Prejudice of the Defendant; the Words of the Act are Indictments against the County for not repairing their Bridges, whereas this was an Indictment only against a Parish, and so not within the Act. A *Certiorari* has frequently gone since the making the Act, and in one Instance even in an Indictment against the County; the King against the Inhabitants of *Mitcham* in *Surry*, was in the Case of a Parish, and a *Certiorari* was awarded, and no Exception that it did not lie. The Defendants in that Case were acquitted, and afterwards an Information against the County, who were found guilty, and many Precedents are to be found in the Office.

But by the Court: We shall overturn all the Practice since the making the Act, if this were to prevail, and therefore judged the Record well removed.

Afterwards it was moved to quash the Indictment for the King, being by a Recital (*That Whereas*). Mr. *Worley* insisted that this Indictment being found by the Grand Jury, the Court *ex debito Justitiæ* ought to proceed on it, and the King could not stop his own Proceeding, but by *Noli prosequi*.

But by the Court: The Indictment must be quash'd.

Trinity,

Trinity, fifth and sixth of George the Second.

The King *against* The Inhabitants of Mellingham.

330. ORDER of two Justices for removing *William Burges* from *A.* to *B.* and the Sessions discharge the Order of the two Justices upon the Merits, and set forth that the said *William Burges* was bound by Indenture, though not actually indented, and adjudged the Settlement on the Foot of that Binding.

A Binding by an Indenture not indented, gains no Settlement.

Sir *Samuel Prime* took an Exception, that this was a Binding without Indenture, and not good, and also whatever the Writing was, the Pauper was no Party to it, nor could be concluded by it.

And by the Court: The Exception must be allowed, and the Order quash'd.

The same Term.

The King *against* Theed.

331. THIS was a *Certiorari* to the Quarter-Sessions to remove a Conviction against the Defendant for not declaring Duty on Can-

Conviction on the 11th Geo. 1. relating to the Duty on Can-

dles, where
Sessions had
mitigated the
Fine set by
Justices,
quash'd for
being too ge-
neral.

declaring to the Officer what Number of Candles and of what Size he intended to make, pursuant to the Directions of the 11 *Geo. 1. c. 30.* Two Justices had set the Fine of fifty Pounds, and the Sessions had mitigated it to twenty Pounds.

Mr. *Attorney General* took an Exception to the Order of Sessions, that they had made, an Order before any Appeal to them, but made this the principal Question, Whether the Sessions have a Jurisdiction, and this will depend on the several Acts of Excise; 11 *Geo. 1.* directs the Fine to be recovered as by any Laws of Excise, and that will make it necessary to consider what are the Excise Acts. The first were the 12 *Car. 2. c. 23.* and the 12 *Car. 2. c. 24.* by which Acts Powers are given to two or three Justices in the Neighbourhood. The Question is, Whether any Law can be called Laws of Excise, but Excise of Beer and Ale; agreed other Matters under Commissioners, but that will not make it a Law of Excise.

In Malt Act is an Appeal to Sessions from two Justices, but then they must proceed on that Act, besides that is not properly a Law of Excise; the 5th of *George* extends only to Proceedings of Commissioners; the 1 *George 2.* relates to Duties that arise by Accident; but suppose a Jurisdiction, yet this

this is an Appeal from Order or Warrant, so that may be an Appeal only from a Warrant, and not from a Conviction.

Mr. Pilsworth: The Question arises on the 11 *Geo. 1.* and gives them Jurisdiction, the 12 *Car. 2. c. 24. §. 45.* intended by the Act that an Appeal should lie from them, though not expressed, that they might be armed with similar Power given by Appeal from Subcommissioners of Excise to Commissioners, as to Regularity of Appeals; 15 *Car. 2. c. 11. §. 19.* there are no Subcommissioners.

Lord Chief Justice: Suppose no Subcommissioners, that will not alter the Law, because the King may appoint them when he pleases.

Court said: Here are two different Offences; Sessions thought it bad for one only, and yet quash both.

An Exception was taken to the Order of two Justices that it was only said, that the same was duly proved; whereas it should appear how and by whom.

Lord Chief Justice and *Mr. Justice Page* seemed to think it unnecessary for them to state the particular Proof, for if they have pursued the Words of the Act it is sufficient.

Mr. Justice Probyn and *Mr. Justice Lee* said, That the Evidence ought to appear,

that this Court might judge of the Sufficiency of the Proof and the Credit of the Evidence, and that it had been so determined.

In *Michaelmas* Term following Mr. *Marsh* took an Exception to the Conviction, that it was only said *being fully and duly proved*, without saying how and in what manner; the 12th *Car. 2. c. 23.* directs, that the Party shall be convicted by Confession, or the Testimony of one or more Witnesses. It has always been thought necessary in these summary Convictions, to state the Proof, that the Court might judge of it, for no Writ of Error lies; and it is for the Security of the Liberty of the Subject, that this Court may be able to see that the inferior Court does not act illegally; cited *Queen against Green, Hilary 1713*, wherein it was alledged, that Oath was made of the Truth of the Premises, *Easter 12 Anne*, *Queen against Browne*, *Queen against Randall*, where it is said that Oath was made of the Truth of the said Complaint, *King against Stephens, Trinity 11 Geo. 1.* *King against Tuck, Easter 11 Geo. 1.* in all these Cases such general State of the Evidence held ill.

Secondly, That it does not appear who the Informer is, and he might be the Evidence,

dence, and then he is intitled to a Moiety of the Penalty, which will invalidate his Testimony.

Mr. *Reeve* in Answer urged, that the Statute requires the Confession of the Party, or the Oath of one or more Witnesses; this was not a Conviction by Confession of the Party, for it appears he denied the Fact; then as to the other, if the Act had actually required two Witnesses, it might have been a sort of Objection against them; but the Statute requires one or more; one here certainly is. As to stating the Evidence, he admitted, that the late Cases did run in the way Mr. *Marsh* mentions, but this Case is different; here is not Evidence given by way of Information in Writing, but the Party appears before the Justices, and pleads Not Guilty, and the Evidence is produced before the Party himself.

Court: The Evidence ought to appear, that we may judge of it, whether it supports the Charge. In the Case of the King against *Baker* in *Trinity* Term in the sixth Year of King *George* the First, it was set forth that the Witness swore that the Defendant was guilty of the Premises, which was held to be insufficient; the Cases cited are in Point, and all the late Cases are this way, though formerly it was held otherwise;

wise; therefore the Conviction must be quash'd.

Mich. fifth of *George* the Second.

The King *against* The Justices of Nottingham.

Mandamus to Justices to allow Costs and Maintenance according to 9 *Geo.* 1. c. 7. and returned that they had allowed thirty Shillings, which was affirmed by the Court, but the *Mandamus* being directed to the Justices at large, when it should have been to the Justices then present at the Sessions, was quashed.

332. *MANDAMUS* to the Justices to allow Costs and Maintenance to the Parish of *Kirlington*; to which the Justices returned, that they had ordered and allowed thirty Shillings, which they thought was what had been reasonably paid by the Parish according to their Judgment.

Mr. *Fazakerly* objected to the Return, That it did not appear that the Justices had made a reasonable Allowance, which by the 9 *George* 1. c. 7. they ought to do; the Return says this Money was reasonably expended, but not that there was no more, and instead of thirty Shillings there might be thirty Pounds.

To which it was answered, That the *Mandamus* was founded upon two Acts, (*viz.*) the 8 & 9 *W.* 3. and the 9 *Geo.* 1. As to the first Act, no Exception; as to the second, the Justices have discretionary Power, and it appears they have used their Discretion, and in that they have followed the Words of the Writ and Act.

Mr.

Mr. *Fazakerley* replied, That they had done right so far as they have gone, but they should have shewn that this was a reasonable Allowance upon the whole Money expended; now it does not appear by this Return, that they took the whole Expence under their Consideration for want of the Word *All*.

The whole Court seemed very clear, that this Act lodged a discretionary Power in the Justices, and that they were Judges of the Sum to be allowed, and affirmed the Return. Afterwards it appeared that the *Mandamus* was directed to the Justices at large, whereas it should have been to the Justices then present at the Sessions, 8 & 9 *W. 3. c. 30.* and for this Exception the *Mandamus* was quashed by the Court.

The same Term.

The King against Cobb.

333. **A** *Mandamus* had been awarded by the Court to the Dean and Chapter of *Bristol*, to admit the Defendant to the Office of Chapter-Clerk, which was returned in the Name of the Body, That in Obedience to the Writ they had admitted the Defendant.

Mandamus
cannot be
quashed after
it is returned
and filed.

Mr. Serjeant *Eyre* moved to quash the Writ, because this was no publick Office, but a mere private Service, and of Consequence the Writ did not lye, afterwards he said there had been some Indorsement on the Writ in the Nature of the Return, but produced Affidavits that the Majority were dissenting to that Indorsement or Return.

But *by the Court*: The Writ is returned and on the File, and you are too late to quash; nor can we admit any Affidavits against the Return; and the Motion was denied.

The same Term.

The King *against* Harvey and others.

Several Persons cannot be joined together in an Indictment for Perjury being a separate Offence.

334. **I**ndictment for Perjury, reciting an Indictment preferred at the Sessions against *A. B.* for Felony, upon which the Defendants were produced as Witnesses to prove the Fact, and the present Indictment sets out the Matter by them sworn; and further charges that *John Harvey* swore, &c. which was separate, and so concludes, then it goes on, that two others and each of them swore, &c. and then adds, that three more and each of them swore, &c.

An Exception was taken, that this is a joint Indictment against many, and was therefore

therefore bad, because the Perjury of one cannot be the Perjury of the other.

Mr. *Reeve* in Support of it said, That he hoped this Indictment was good, for that it was not only charged that they had sworn, &c. but also that each of them had sworn, &c. Crimes are in their Nature several, and therefore though the Charge was only that they did, &c. yet it shall be understood that each did, &c. *Easter 5 Anne, 1 Salk. 382. Trinity 10 Anne, the Queen against Marshall.* Indictment against two for receiving stolen Goods; one was acquitted. And it was moved in Arrest of Judgment, that it was not charged that each received, &c.

But *the Court* said, They would understand the Charge in that Sense, *1 Vent. 302. 3 Keb. 708, the King against Humphreys, 2 Roll. 345. Palm. 367. Mich. 10 Anne, the Queen against Williams, 1 Salk. 384.* the first Indictment therefore is not liable to the Objection, and the Objection itself is not a good one; as to the subsequent Indictments.

Lord Chief Justice: Ingrossing, Beating, &c. may be joint Acts, but Swearing cannot.

Mr. *Fazakerly* for the Defendants: Such Indictments admitted would introduce great Confusion; not only distinct but different Offences

Offences (as Batteries, Perjuries, &c.) may come to be joined; the Indictments at the Assizes may be all thrown into one, then suppose a *Certiorari* or Writ of Error is brought by one to remove such an Indictment against twenty or thirty, what can be done? the only way to prevent this Confusion is to require several Indictments against several Persons.

If this Indictment is to be considered as a distinct Indictment against *John Harvey* in the first Part of it, and then as another Indictment against the others in the following part of it, then the Cases against joining different Offences in the same Indictment, are Authorities against this Indictment, for then the Offences charged in this Indictment are several, one a several Perjury, the other a joint one; Queen against *Hodgson*, *Trinity 6 Anne*, two not indictable together as Scolds. He answered the Cases of the King against *Atkinson*, and that of the Queen against *Marshall*, the Cases cited on the other Side, by saying, That the Acts there charged were several Acts done in Conjunction, but several cannot join in a Perjury, for every one takes a distinct Oath.

Lord Chief Justice: Where the Act is such as several may join in, several may be joined in one Indictment for that Act. Now
Bat-

Batteries, &c. which are the Offences in most of the Cases cited on the Part of the King, are Acts in which several may join, but Perjury is not such an Act, and therefore several cannot be joined in an Indictment for Perjury.

Mr. Justice *Page* to the same Effect, and said further, that this Practice, if allowed, might possibly put a Defendant under such Inconvenience in giving Evidence, that a Jury might be forced to find him guilty of an Offence, there was hardly any Colour of Reason to charge him with. No Words he said could have made this Indictment good.

Mr. Justice *Probyn*: If such Indictments were allowed, the Evidence given against one Defendant might influence the Jury against another, though it did not relate to his Offence, and therefore the Condemning such Indictments was a Matter of great Consequence to the Liberty of the Subject.

Mr. Justice *Lee*: The Counsel for the King have hardly endeavoured to justify this Indictment as a joint one, but they would have it considered as several Indictments against the several Defendants. It would be very dangerous to allow several Persons, guilty of several Offences, to be joined in one Indictment. Several Actions cannot be joined, and therefore, as it seems,
several

several Indictments cannot, though no Cases have been cited to prove this of Indictments, yet the Reason seems to be the same with respect to these as Actions; so Judgment was arrested and the Defendants discharged.

Easter, seventh of George the Second.

The King against Gibson.

In all Motions in a criminal Matter, as well for a new Trial as in Arrest of Judgment, the Defendant ought to be in Court.

335. **T**HE Defendant had been convicted at *Guildhall* for forging a Note; and now

Mr. Serjeant *Eyre* would have moved for a new Trial; but it was objected by the Counsel for the King, that the Defendant ought to be in Court when any Motion was made in Arrest of Judgment, or for a new Trial.

On the other Side it was said, That in the Case of a Motion for a new Trial, the Party need not be in Court, though they admitted that in Arrest of Judgment he must.

But this Distinction was not agreed by the Counsel for the King.

The whole Court seemed to think that the Party ought to be in Court, but said the Counsel might look into Precedents, and stir it again before four Days were expired.

In

In the Case of the King and Lady *Lawley*, *Hilary 3 Geo. 2.* held in a Motion for a new Trial or in Arrest of Judgment, the Defendant must be present in Court, if a Commitment is to be the Consequence of the Judgment.

Afterwards the Chief Justice said, That he had looked into Precedents, and found that it was settled, that in all Motions, as well for new Trials, as in Arrest of Judgment, in a criminal Matter, the Defendant ought to be in Court; and so it was held in the Case of the Queen against *Ridpath*, *Mich. 12 Anne*, the King against *Lant*, *7 W.* and said that he mentioned it, that for the time to come it might not be made a Question, but the Defendant ought to appear; and a Rule was made accordingly.

The Defendant had been indicted for forging a Note, and publishing the same knowing it to be forged, and in the Indictment they had set forth the Purport, as also the Note itself; and it was laid different ways. Defendant was convicted, but upon the Trial an Objection was taken, that the Purport set forth was not agreeable to the Import of the Note, as the same was set out; and as the Evidence did not fully come up to the Purport set forth, they insisted for the Defendant that they ought to be at Liberty to move it in Arrest

Indictment
for forging
a Note, the
Purport as
well as the
Note set forth,
and moved
for a new
Trial, be-
cause the Pur-
port was not
agreeable to
the Import of
the Note, but
denied.

of Judgment as a Variance, or for a new Trial.

Chief Justice on the Trial gave them Leave to move it for a new Trial, and now being moved, it was insisted that this Import was the Substance of the Indictment, and the whole made one Offence, and the Evidence not coming up to it, the Defendant ought to have been acquitted; and insisted further, that this was such a Variance that the Defendant could not have the Benefit of the Plea *Auterfoits Convict*. On the other Side, this is not the Substance of the Indictment; it was unnecessary to have set out the Purport where the Note itself was set out, and it was only the Inference of the Grand Jury upon the Import, and though that should be wrong it is not material. Suppose a Declaration on a Note set out, by Virtue whereof the Defendant became bound to pay the Money at a wrong Day, that would not be material, because the Note is the Gift of the Action.

Chief Justice said, The Evidence was strong and seemed clear; that the Variance contended for seemed to him not inconsistent with the Tenor of the Note set out; but it was a Matter *ex abundanti*, and not necessary, but left to the other Judges.

Mr. Justice *Page* and Mr. Justice *Probyn* were clear, that this was not the Substance

of the Indictment, and that the Verdict ought to stand, and no new Trial be granted.

Mr. Justice *Lee* said, That this was properly a Motion in Arrest of Judgment, it being a Variance arising upon the Face of the Record; but though clearly there was no Inconsistency between the Purport and Import, and therefore not sufficient to ground a Motion in Arrest of Judgment upon it, agreed that the Gift of the Indictment was Forging the Note itself, and not the Apprehension of the Jury upon it, was clearly against arresting the Judgment or a new Trial.

Chief Justice agreed.

By the Court: Take nothing by the Motion.

Chief Justice: There is a Difference between a Motion in a Civil Action, where a Variance appears, though in a minute Circumstance, and shall affect the Plaintiff, and a new Trial be granted, or the Judgment arrested. But in the case of a criminal Prosecution, if the Offence laid be proved, though every Circumstance attending it be not proved, it will be sufficient.

Trin.

*Trin. eighth of George the Second.**The King against Gibson.*

Defendant convicted for Forgery was fined and imprisoned, and having paid his Fine, and the Time of his Imprisonment being expired, was bailed.

336. **T**HE Defendant had been convicted of publishing several forged Notes to a considerable Value, and was fined one hundred Pounds, six Months Imprisonment, and till the Fine was paid, and then to find Security for his good Behaviour for seven Years.

Mr. *Ketleby* moved, that he might be bailed, he having paid his Fine, and the Time for which he was committed being expired.

It was said in Answer, That Bail could not be opposed, but as the Notes which he had published were for several thousand Pounds, hoped the Court would consider of the Value of those Notes in the Sum for which his Bail should stand.

Lord Chief Justice: In Mr. *Ward's* Case the Court governed themselves by taking Bail in double the Fine, and so we must do in this Case.

N. B. This he mentioned as a Rule now established.

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